

No. 2294

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NORTHERN COMMERCIAL COMPANY,  
Plaintiff in Error and Appellant,

vs.

UNITED STATES OF AMERICA,  
Defendant in Error and Appellee.

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Transcript of Record.

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Upon Writ of Error to and Upon Appeal from the  
United States District Court of the Territory  
of Alaska, Fourth Division

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FILED

AUG 25 1913



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[Title of Court and Cause.]

**Names and Addresses of Attorneys of Record.**

JAMES J. CROSSLEY, Attorney for Defendants  
in Error and Appellees, Fairbanks, Alaska.

McGOWAN & CLARK, Attorneys for Plaintiffs in  
Error and Appellants, Fairbanks, Alaska. [1\*]

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*In the District Court for the Territory of Alaska,  
4th Division.*

No. 657.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN COMMERCIAL COMPANY,

Defendant.

**Praeipie for Transcript.**

To C. C. Page, Clerk of the Above-named Court:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the writ of error and appeal heretofore perfected to said Court, including all papers, both on writ of error and on appeal in but one record, in accordance with the order of this Court of May 24, 1913, and will include in said transcript the following papers, to wit:

- (1) Statement of facts without action, filed 31 December, 1906;

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\*Page-number appearing at foot of page of original certified Record.

- (2) Order staying proceedings, filed 2 January, 1907;
- (3) Judgment on report of Referee, filed 5 June, 1912;
- (4) Bill of exceptions, settled 9 December, 1912;
- (5) Petition for writ of error, filed 20 May, 1913;
- (6) Petition for appeal, filed 20 May, 1913;
- (7) Assignment of errors to be used both on writ of error and appeal direct, and both filed 20 May, 1913;
- (8) Order allowing writ of error and fixing bond, filed 20 May, 1913;
- (9) Order allowing appeal and fixing amount of appeal bond, filed 20 May, 1913;
- (10) Order relative to supersedeas bond on writ of error, filed 20 May, 1913;
- (11) Bond on appeal and supersedeas, filed 20 May, 1913;
- (12) Designation of place for hearing of writ of error and appeal, filed 24 May, 1913;
- (13) Writ of error, dated 19 May, 1913;
- (14) Citation on writ of error, dated 19 May, 1913;
- [3]
- (15) Citation on appeal, dated 19 May, 1913;
- (16) Order extending time within which to file appeal, filed 24 May, 1913;
- (17) Praecipe for transcript;
- (18) Stipulation relative to printing record;

This transcript to be prepared as required by law, the orders and rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk



of said United States Circuit Court of Appeals for the Ninth Circuit on or before the first day of August, 1913, pursuant to the order of this Court of 24 May, 1913, extending time and ordering but one record.

McGOWAN & CLARK,  
Attorneys for Defendant.

**Stipulation Relative to Printing Record.**

Due service of the foregoing praecipe is admitted, and it is hereby stipulated that the papers and records enumerated therein shall constitute the record to be used on the hearing, both of the writ of error and of the appeal direct in the above-entitled cause; that the same may be printed in one record; and that, in the printing of said record for the consideration of said United States Circuit Court of Appeals for the Ninth Circuit on writ of error and direct appeal, the title of the court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted, in the place of said title in all papers, in all other parts of said record, the words "Title of Court and Cause." [4]

Dated at Fairbanks, Alaska, this second day of June, A. D. 1913.

JAMES J. CROSSLEY,  
United States Attorney,  
Attorney for Plaintiff.  
McGOWAN & CLARK,  
Attorneys for Defendant.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. N. C. Co.

Praeceptum for Transcript. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 2, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy. [5]

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**[Agreed Statement of Facts and Stipulation to  
Submit Controversy Without Action, etc.]**

[Title of Court and Cause.]

Whereas, a question in controversy has arisen between the United States of America, and the Northern Commercial Company, as to the payment of a certain license fee or tax of ten cents per ton on freight handled or stored by it at the town of Chena, Alaska, and elsewhere in the Territory of Alaska, and which question in controversy might be the subject of an action or actions in the courts of the District of Alaska, and the parties hereto have agreed to submit the same to the determination of the above Court without action, under the provisions of Chapter 28 of the Code of Civil Procedure of the District of Alaska, and have agreed to the following state of facts upon which the said question in controversy shall be submitted to this Court:—

I.

The defendant is a corporation duly incorporated under and by virtue of the Laws of the State of New Jersey, and carrying on a general merchandise and transportation business in the Territory of Alaska.

II.

That Section 460 of the Code of Criminal Procedure of the District of Alaska, as amended by Section 29 of the Political Code of the said District, provides: "That any person or persons, corporation or com-

pany, prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska, shall first apply for permission so to do [6] from the District Court or a subdivision thereof, in said District, and pay for said license for the respective lines of business and transportation, as follows, to wit:

. . . . "Public docks, wharves and warehouses, ten cents per ton on freight handled or stored."

### III.

That during the last three years, defendant has been carrying on a merchandise and transportation business in the Territory of Alaska, and has handled a large amount of freight for itself and its shippers, a portion of which freight has been landed at the town of Chena for transportation from that point by rail to the town of Fairbanks.

### IV.

That defendant contends that it has not been conducting a public dock, wharf or warehouse at Chena aforesaid, but it maintains at said town of Chena, a building within which it at certain times stores general merchandise belonging to it and to its shippers.

### V.

That said defendant contends that it does not maintain or conduct a public dock, wharf or warehouse at Fairbanks, but it does maintain at Fairbanks aforesaid, warehouses within which it stores merchandise belonging to it, and which it transports by its steamboats from points outside of Alaska to said town of Fairbanks.

## VI.

That said defendant has a wharf and warehouse on the river bank in front of its said premises in Fairbanks aforesaid, at which steamboats owned by it, land and unload the freight belonging to the said defendant and its shippers; but that no wharfage charge, dockage charge or storage charge is made for freight so landed upon said wharf. [7]

## VII.

That said defendant is not engaged in the business of prosecuting or attempting to prosecute public docks, wharves or warehouses within the Territory of Alaska, and all docks, wharves or warehouses owned by it are maintained for the purpose of handling and holding goods, wares and merchandise belonging to the defendant itself, or the persons for whom it ships.

## VIII.

That defendant does not accept goods on storage for hire, nor does it permit boats other than its own to land at its warehouses or docks for the purpose of unloading goods for hire.

## IX.

That a controversy has arisen between the parties hereto, as to the construction of that portion of Section 460 hereinbefore set out, the defendant contending that it should not be compelled to pay a license fee of ten cents per ton on freight handled or stored by it, and the District Attorney representing the United States of America, in the Third Judicial Division of the District of Alaska, does not concede the correctness of the contentions made by defend-

ant, and hereby consents that the controversy aforesaid be submitted to the Court for construction, therefore it is consented by the parties hereto that the construction of said section may be submitted to the Court for determination.

### X.

That it is further stipulated by the parties hereto that this statement may be amended from time to time either at or before the final argument before the Court, so as to set out fully all the facts necessary to enable the Court to determine the matters in controversy; and in that connection either of the parties hereto may take such depositions or other testimony as by them may be deemed necessary to establish the gross amount of tonnage handled by the defendant or to more fully explain any of the matters herein set forth. [8]

### XI.

That it is stipulated by the District Attorney aforesaid, for and on behalf of the plaintiff, that if the Court shall determine that the defendant should have paid the license fees aforesaid, or any of them, and the defendant within five days after the final judgment in this matter, shall pay in to the Clerk of this Court the amount that it should have paid in the first instance under the section aforesaid, and shall pay any costs of these proceedings, that thereupon it shall be exonerated from payment of any further penalties or fines under the provisions of the Code aforesaid.

### XII.

That it is stipulated by the parties hereto that



there has been no endeavor on the part of the defendant to avoid payment of the licenses aforesaid if defendant is lawfully chargeable therewith, and in that connection defendant expressly avers that it is acting in good faith in this connection and stands ready and willing at any time upon request of the District Attorney to pay into court, within three days after such request, a sufficient sum of money to cover all licenses that it may be determined that it is properly chargeable with, and such further amount as will cover the costs of these proceedings, or to give such bonds therefor as shall be satisfactory to the District Attorney, or to the Court.

### XIII.

It is stipulated and agreed by parties hereto that this controversy is real and that these proceedings are taken in good faith to determine the rights of the parties and that by reason of these proceedings the defendant shall in no wise be prejudiced.

### XIV.

That it is further stipulated by the parties hereto in the event that the above Court should determine herein that defendant should pay the license fee aforesaid, that thereupon a referee [9] may be appointed to ascertain the amount of tonnage upon which said fee should be paid, and to report to the Court, said report to be subject to review by the Court the same as in other matters.

### XV.

That it is hereby stipulated that should either of the parties hereto be dissatisfied with the decision of the Court, in this matter, that it may prosecute an

appeal therefrom, the same as it could from an ordinary judgment of said Court.

WHEREFORE, the parties hereto do hereby submit the foregoing to the above Court for its decision without action, in accordance with the provisions of Chapter 28 of the Code of Civil Procedure of the District of Alaska.

Dated Fairbanks, Alaska, this 29th day of December, A. D. 1906.

N. V. HARLAN,  
District Attorney in and for the Third Division, District of Alaska, Attorney for Plaintiff.

McGOWAN & CLARK,  
Attorneys for Defendant.

United States of America,  
District of Alaska,—ss.

Volney Richmond, being first duly sworn, deposes and says: That the defendant is a private corporation. That I am the resident agent for the defendant above named, and am the person upon whom summons should be served in an action against said defendant. That the controversy set forth in the foregoing petition is real and these proceedings are taken in good faith to determine the rights of the parties therein.

VOLNEY RICHMOND.

Subscribed and sworn to before me, this 19th day of December, 1906.

[Seal] JOHN A. CLARK,  
Notary Public in and for the District of Alaska.

United States of America,  
District of Alaska,—ss.

N. V. Harlan, being first duly sworn, deposes and says: I am the United States District Attorney for the Third Judicial Division of the District of Alaska. That the United States is a party to the foregoing controversy. That the controversy set forth in the foregoing petition is real and that these proceedings are instituted in good faith to determine the rights of the parties therein.

N. V. HARLAN,

Subscribed and sworn to before me, this 31st day  
of December, A. D. 1906.

[Seal]

JOHN A. CLARK.

Notary Public in and for the District of Alaska.

[Endorsed]: No. 657. U. S. District Court, District of Alaska, Third Division. United States of America vs. Northern Commercial Co. Statement on Submission Without Action. Filed in the District Court, Territory of Alaska, 3d Division. Dec. 31, 1906. Edward J. Stier, Clerk. By E. A. Henderson, Deputy. [11]

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[Title of Court and Cause.]

**Order [Directing Filing of Statement of Facts,  
Staying Proceedings, etc.].**

It appearing to the satisfaction of the Court from the Statement of Facts on Submission Without Action entered into by and between the above-named parties that a question in controversy, which might



be the subject of an action in a court of record, exists between said parties, and that a proper case exists for the submission of such question to the determination of this court; and upon motion of N. V. Harlan, Esq., United States Attorney for the Third Judicial Division, District of Alaska, attorney for plaintiff, and who is acting in this matter under advice received from the Attorney General of the United States of America, and Thomas A. McGowan, one of the attorneys for defendant, appearing and consenting thereto,

IT IS THEREFORE HEREBY ORDERED: That the Clerk of this court file the Statement of Facts on Submission Without Action this day presented to the Court, and that from this time, this Court shall have jurisdiction of the controversy therein set out as if the same were an action pending; and that all proceedings in the District Court for the Third Division of Alaska against the defendant for the collection of the license fee or tax, mentioned in the aforesaid statement, shall be stayed, pending the final determination of these proceedings.

It is further ordered that a copy hereof, to which shall be annexed a copy of the Statement of Submission filed, shall be served on all parties interested in this proceeding. [12]

Done in open court this 31 day of December, A. D. 1906.

JAMES WICKERSHAM,  
District Judge.

Entered in Court Journal No. 7, page 144.

Consented to:

N. V. HARLAN,  
Attorney for Plaintiff.  
McGOWAN & CLARK,  
Attorneys for Defendant.

Attest:

[Court Seal]                      EDWARD J. STIER,  
Clerk District Court for the Territory of Alaska,  
Third Division.

[Endorsed]: No. 657. U. S. District Court, District of Alaska, Third Division. U. S. of America, vs. Northern Commercial Co. Order. Filed in the District Court, Territory of Alaska, 3d Division. Jan. 2, 1907. Edward J. Stier, Clerk. By E. A. Henderson, Deputy. [13]

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*In the District Court for the Territory of Alaska,  
Fourth Judicial Division, at Fairbanks.*

No. 657.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NORTHERN COMMERCIAL COMPANY,  
Defendant.

**Judgment on Report of Referee.**

An order having been heretofore, to wit, on the 24th day of August, 1911, duly given, made and entered in the above-entitled action, in which, among other things, it was ordered that the defendant,

Northern Commercial Company, is liable to pay to the United States a license tax of ten cents (10¢) per ton on freight consigned to others than the defendant handled on its public wharf in the town of Fairbanks, Alaska, and by which order Guy B. Erwin, Esq., an attorney of this Court, was appointed a Referee to take proofs as to the amount of such freight so handled on its public wharf, and the said Referee having been attended by the respective parties and their counsel, and having taken testimony as to the amount due from the defendant by reason of the license fee or tax upon such freight so handled upon said public wharf of defendant, and having heretofore on the 16th day of May, 1912, filed his report in writing in which report it appears that there is due from the Northern Commercial Company, a corporation, to the United States, the sum of Two Thousand One Hundred Ninety-nine Dollars and Ninety-four Cents (\$2,199.94) on the total amount of freight handled upon its said public wharf at Fairbanks, Alaska, during the years 1905, 1906, 1907, 1908, 1909, 1910 and 1911, inclusive, belonging, consigned to or consigned by persons or corporations other than the defendant herein, said amount of freight so handled as found by the said Referee being 21,999.42 tons, which report of said [14] Referee contains certain statements or findings of fact and conclusions of law which, by the consent of counsel for the respective parties hereto, may be used by the Court as its and in lieu of findings of fact and conclusions of law of this Court, the defendant reserving an exception as to substance, but waiving

objection as to the form thereof, and the said defendant having made a motion to set aside and having filed objections and exceptions to the said report, or certain parts thereof, which motion, objections and exceptions have been heretofore overruled by the Court, to which ruling defendant excepted, which exception is hereby allowed.

NOW, THEREFORE, on motion of counsel for plaintiff, It is ordered, adjudged and decreed that the said report of the said Referee, including the aforesaid findings of fact and conclusions of law, be in all respects approved and confirmed.

It is further ordered, adjudged and decreed that the above-named plaintiff, United States of America, do have and recover from the defendant, Northern Commercial Company, a corporation, the sum of \$2,199.94, together with its costs and disbursements herein.

Done in open court this 5th day of June, 1912.

PETER D. OVERFIELD,

District Judge.

Entered in Court Journal No. 12, page 52.

[Endorsed]: Original. No. 657. In the District Court of the United States for the 4th Div'n of Alaska. United States of America vs. Northern Commercial Company. Judgment on Report of Referee. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 5, 1912. C. C. Page, Clerk. By H. C. Green, Deputy. [15]

[Title of Court and Cause.]

**Bill of Exceptions.**

BE IT REMEMBERED, that the above-entitled cause came on duly and regularly to be heard on Saturday, the nineteenth day of August, A. D. one thousand nine hundred and eleven, at Fairbanks, Alaska, before the Honorable Peter D. Overfield, Judge of said Court, and the Honorable Edward E. Cushman, Judge of the District Court of the Territory of Alaska, Third Division, the Government being represented by the Honorable James J. Crossley, United States Attorney for the Fourth Division of Alaska, and the Honorable John Knox Brown, Assistant United States Attorney for said Fourth Division; the defendant company being represented by its attorneys and counsel Messrs. McGowan & Clark. Whereupon the following proceedings were had and testimony was taken: [16]

**[Proceedings Had August 19, 1911.]**

Wharfage Case—No. 657.

Mr. McGOWAN.—We contend under the stipulation that we are conducting a warehouse in Dawson, Fairbanks and Chena for our own private use. At our wharf here, which has a warehouse upon it, it is used simply for the purpose of landing our own boats. We unload our own freight and freight for people for whom we carry it at that dock. The dock is not a public dock according to our contention or a wharf, in any sense of the word; that is our contention—it is simply a private wharf and private ware-



house, used for our private purpose and none other; that we do not permit other boats to land there. We have no wharfage charges, we have no dock, as a matter of fact because I do not think there is a dock in the interior of Alaska. We have a wharf and warehouse, but it is purely private, as we submit under the law and under the decisions; and in that connection we want at this time to call the Court's attention to the section, 460, covering general mercantile business of \$100,000 or over. Under that we pay a license, the largest license that is fixed by the law, and at this time I desire to introduce in evidence the licenses for the years 1905 and 1906, for the purpose of showing that we are conducting a general mercantile business and part of our general mercantile business is to bring our freight here, our goods here, that we have to store and sell during the year; and in connection with that business it is necessary for us to have a warehouse and landing place; that we have that wharfage and landing place at Chena and we also have a warehouse there for the purpose of convenience only—that is, [17] late in the season, the steamers cannot come up the slough. We then transfer our freight or our customer's freight from our steamboats to this warehouse, where it remains in our warehouse without charge of any kind until such time as we can deliver it over the railroad or in some other way. We offer these license receipts at this time.

Mr. CROSSLEY.—To which we object as incompetent, irrelevant and immaterial for the reason that it only covers a mercantile license, for their mercan-

tile business. This law covers the license fee or tax for public docks and wharves and warehouses and Mr. McGowan admits they are doing the business of a common carrier, and therefore it is not what could be really called a private dock, although owned by a private company, and that the license fee or tax for public docks and wharves is a separate license or fee from that of a mercantile establishment; and further that defendant has admitted, by stating that they used these docks as wharves for the loading and unloading of the freight which they carried for their customers, that is those who patronize the Northern Navigation Company or the Northern Commercial Company as carriers or shippers.

Objection overruled. Plaintiff allowed an exception.

Mr. McGOWAN.—We offer first the licenses for the year 1905 and then for 1906. They are admitted in evidence, marked Defendant's Exhibit Number 1 (Case Number 657), and Defendant's Exhibit Number 2 (Case Number 657), respectively, and read as follows:

**[Defendant's Exhibit No. 1—Case No. 657—  
License.]**

“\$500.

Number 1325.

United States of America,  
Territory of Alaska.

**LICENSE FOR MERCANTILE. [18]**

Received from Northern Commercial Company  
the sum of FIVE HUNDRED DOLLARS. For

License for carrying on the business of Mercantile of \$100,000 per annum, at Fairbanks town, Territory of Alaska, Division Number 3, from the 15th day of June, 1905, to the 14th day of June, 1906.

Issued in compliance with the order of the District Court, Territory of Alaska, Third Division, duly made the 4th day of August, 1905.

[Seal]                      By EDWARD J. STIER,  
Clerk of the District Court, Territory of Alaska,  
Third Div.

By \_\_\_\_\_,  
Deputy.

Dated at Fairbanks.”

**[Defendant's Exhibit No. 2—Case No. 657—  
License.]**

“\$500.

No. 3014.

United States of America,  
Territory of Alaska.

**LICENSE FOR MERCANTILE.**

Received from NORTHERN COMMERCIAL COMPANY the sum of FIVE HUNDRED DOLLARS.

For License for carrying on the business of Mercantile of \$100,000 per annum, at Fairbanks, town, Territory of Alaska, Division Number 3, from the 15th day of June, 1906, to the 14th day of June, 1907. Issued in compliance with the order of the District Court, Territory of Alaska, Third Division, duly



made the 4th day of August, 1906.

[Seal] By EDWARD J. STIER,  
Clerk of the District Ct., Territory of Alaska,  
Third Division.

By \_\_\_\_\_,  
Deputy.

Dated at Fairbanks.”

Mr. McGOWAN.—I will call Mr. Richmond.  
[19]

**[Testimony of Volney Richmond, for Defendant.]**

VOLNEY RICHMOND, a witness called and sworn in behalf of the defendant, testified as follows:

**Direct Examination.**

(By Mr. McGOWAN.)

Q. You are the manager of the Northern Commercial Company? A. Yes, sir.

Q. In the Tanana Valley? A. I am.

Q. Are you familiar with the warehouse maintained by the company in Chena? A. I am.

Q. What is the purpose of maintaining that warehouse?

A. Transferring the freight from the slough.

Q. Do you conduct a warehouse business down there? A. No, sir, we do not.

Q. Do you issue warehouse receipts?

A. No, sir.

Q. Did the company at any time conduct a general warehouse business or issue warehouse receipts?

A. Not in the valley.

Q. Have you a wharf at Chena?

(Testimony of Volney Richmond.)

A. We have a landing place, no wharf.

Q. Is there any building constructed on that wharf?     A. None whatever.

Q. What do you use the wharf for?

A. Simply for the landing of the steamers.

Q. Do you permit other steamers to use that wharf?

A. They use that wharf—they use the waterfront.

Q. Do you charge them?

A. No charge of any kind.

Q. Coming to Fairbanks—have you a wharf or warehouse here?     [20]     A. We have.

Q. Who constructed that wharf?

A. The N. C. Co.

Q. At their own expense?

A. At their own expense.

Q. And who is the owner of that wharf?

A. The Northern Commercial Company.

Q. What is that wharf for?

A. It is for the handling of freight,—transferring the freight from the steamers to the consignees and to our own house.

Q. Have you a warehouse on the wharf?

A. Yes, sir.

Q. Is there any charge made for warehouse on that wharf?     A. None.

Q. In connection with the warehouse that you maintain, in connection with your plant, your various plants throughout Alaska, what are those warehouses used for?

(Testimony of Volney Richmond.)

A. The storage of our own supplies—the Northern Commercial Company goods.

Q. Why is it necessary to have a warehouse of that size?

A. On account of the short summer season and the long winters we have to do that to take care of the camps during the winter.

Q. The Northern Commercial Company has to maintain warehouses one of which is in this portion of Alaska, for that reason?

A. That is the reason.

Q. And that is the only reason they maintain it?

A. Yes, sir.

Q. The warehouses are separate from the docks and wharves? [21]

A. Yes, sir, they are separate from the dock and wharf.

Q. So you have at Chena and Fairbanks and other places on the rivers in Alaska these docks and wharves separate from your warehouses?

A. In Fairbanks, not in Chena—we have no wharf at Chena.

Q. You have at Fairbanks?

A. We have a wharf at Fairbanks.

Mr. McGOWAN.—That is all.

Cross-examination.

(By Mr. CROSSLEY.)

Q. That wharf or dock you use in transporting the goods that are shipped over the N. C. Company's lines or the N. N. Company's lines—which are one

(Testimony of Volney Richmond.)

and the same thing? A. We do, yes, sir.

Q. Is it not true that the cost of maintaining your public dock and wharf at Fairbanks is covered by charters which you make to those who ship over the N. C. Company or the N. N. Company lines?

Mr. McGOWAN.—We object to that.

Mr. CROSSLEY.—I withdraw the word “public.”

The WITNESS.—It is not, no, sir.

Q. How do you pay the cost of keeping up your dock and wharves at Fairbanks?

A. The same as any other expense.

Q. Out of company funds?

A. Out of company funds.

Q. The same as you do for maintaining the operation of a steamboat from here to St. Michaels?

A. Out of general funds.

Q. And there are a great many ships and a great many shippers [22] who ship their goods over your line of steamboats operating on the Tanana and Yukon Rivers in Alaska and those goods pass through your dock at Fairbanks and your wharf?

A. Yes, they pass through the wharf.

Q. Also you use this dock or wharf here at Fairbanks to maintain an office for those who desire passage—where passengers on the steamboats coming to or going from Fairbanks on the Tanana River and Yukon River purchase their tickets? A. Yes, sir.

Q. And where they have their baggage shipped from and to? A. We do.

Q. And also the freight that these shippers trans-

(Testimony of Volney Richmond.)

fer over your steamship lines in Alaska pass through this dock or wharf here at Fairbanks?   A. It does.

Q. And pass through your wharf and dock at Chena?

A. We have no wharf at Chena; there is simply the warehouse that crosses the railroad—we have nothing on the waterfront.

Q. Nothing on the waterfront?

A. Nothing on the waterfront.

Q. I understood you to say that the Northern Commercial Company and the Northern Navigation Company are one and the same companies?

A. I didn't say so.

Q. Are the N. C. Company the owners or the N. N. Company?

A. That is something I couldn't tell you because I don't know.

Q. They own a majority of the stock?

A. The N. C. Company?

Q. Yes—in the N. N. Company?

A. That is something I don't know.

Mr. McGOWAN.—There are identically the same officials all the [23] way down, the same stockholders. The reason that is brought in the name of the Northern Commercial Company, in 1905 and 1906 they were operating under the name of the Northern Commercial Company alone, they were handling both steamers and freight, but since that, one handles the steamboats and the other the freight.

Mr. CROSSLEY.—Do you admit on behalf of the

(Testimony of Volney Richmond.)

defendant that their interests are one and the same and they are the same company practically for the purpose of this case?

Mr. McGOWAN.—Yes, for the purposes of this suit, yes, sir, and damages against them would be just the same as against the N. N. Company.

Q. The expense of handling the freight which you handle on the wharf is that not absorbed in the general expense of handling the freight over your lines?

A. How is that?

Q. The general expenses of handling the freight that your boats ship over your lines and deliver to you at your dock and wharf here at Fairbanks isn't that expense of maintaining the wharf and dock included within the expense of the cost of shipping the goods?

A. Not in the cost of shipping the goods but the cost of handling the goods at the dock.

Q. Not only at the dock but on the steamboat at the point where you deliver them?

A. No, it is not.

Q. Then you make a charge for handling at the dock?

A. The Longshoremen expense and the expense of maintaining the wharf.

Q. That is paid by the company? [24]

A. Yes, sir, by the company.

Q. Then it is absorbed in the general freight charges?

A. No, sir, it is not absorbed in the general freight charges.



(Testimony of Volney Richmond.)

Q. The shippers don't see any difference—they pay it in one bill, don't they?

A. The shipper pays the freight charges.

Q. And that is all he does pay?

A. That is all he does pay.

Q. Isn't that cost of maintaining your dock there or your wharf included in these freight charges, these longshoremen—don't you put that expense in?

A. We do not.

Q. Suppose a man ships from St. Michaels to Fairbanks and you charge him so much for shipping his goods up here and he pays you—when you are counting up what your costs are don't you count up also the longshoring cost here?

A. In counting the cost of operation we have to include the longshoring cost.

Q. You count that in the general freight cost?

A. In the general cost of operating the company.  
(By Mr. McGOWAN.)

Q. The steamer "Schwatka" arrived three days ago with a barge—that freight was consigned to various customers or consignees? A. Probably was.

Q. Could those consignees go and get that freight at the wharf, the consigned freight for the stores at Fairbanks and take that freight off, without paying any charges, docking or wharfage, of any kind?

A. They could by paying the freight bills. [25]

Q. These freight rates are fixed in Seattle?

A. It is a tariff rate, published charge.

(By Mr. CROSSLEY.)

Q. What is your proportion of the business han-

(Testimony of Volney Richmond.)

dled by the steamship company, compared with your own business,—isn't the business carried on your steamers much greater than that of your own customers?

A. No, we handle the greater portion of it ourselves.

Q. Is it your answer to Mr. McGowan that you consider that you make a present to the shippers of this cost of maintaining the dock?

A. No, all transportation companies have to go to the expense of handling freight.

Q. Your company is a common carrier?

A. I presume they are.

Q. You are doing a common carrier's business of transporting freight and passengers on the rivers here in Alaska? A. They are.

(By the COURT.)

Q. Is this wharf here in Fairbanks built on your own ground or in the street?

A. It is built on the land in front of our town property on the waterfront. I couldn't answer whether it is Government domain or whether it belongs to the company.

Q. When a man has freight sent in here by you how long do you store it free of charge?

A. We are supposed to 24 hours, sometimes 48 and sometimes longer, and after that time it is transported to one of the storage warehouses in the town.

Q. Not one of your own? [26]

A. Not one of our own. We generally use what is known as the Tanana warehouse across the river.



(Testimony of Volney Richmond.)

Q. In Chena how do you land the freight and passengers?

A. They are landed there on the waterfront.

Q. Just put a gang-plank out on the dirt?

A. Yes, sir—just put a gang-plank out on the dirt.

Q. Nothing in the nature of a wharf?

A. Nothing in the nature of a wharf.

Q. There is nothing in the nature of an artificial landing or wharf there?

A. None whatever—the waterfront has been piled, partly by the people of the town and partly by people who own the ground, but simply more to protect the bank, not for dockage purposes.

(By Mr. CROSSLEY.)

Q. The Chena Slough here, on which Fairbanks is located, is a navigable stream for steamboats operating in Alaska?     A. It is supposed to be, yes, sir.

Q. And the dock that you have there and wharf is built right on and into the edge of the river?

A. On the water's edge, yes, sir.

Q. Do you understand it is on the Government property there—that 60 feet belongs to the Government?

A. That is a question I have heard thrashed out so many times I don't know how to answer it—I don't know.

(By Mr. McGOWAN.)

Q. Is there a street between the store and wharf and a street each end of the wharf?     A. Yes, sir.

[27]

Q. How wide are the streets?

(Testimony of Volney Richmond.)

A. That street is probably in the neighborhood of 60 or 70 feet wide.

Q. Do you know how it came to acquire that waterfront?

A. I suppose through the trading-post site.

Q. From whom?

A. From E. T. Barnette, from the Government.

Q. Wasn't that acquired from the deed executed by the Government and Captain Barnette by which the rights of all parties were adjusted?

A. It was.

Mr. McGOWAN.—I believe that is on record.

Q. The courthouse, all of this property, was the Barnette trading-post—that is right, is it not, and it was laid out in that way?

Mr. CROSSLEY.—It was divided up into city lots.

Mr. McGOWAN.—Before it was divided up into city lots it was a trading-post, Judge Wickersham was one of the parties acting for the Government and that property was acquired according to that deed?

The WITNESS.—Yes, sir.

Mr. CROSSLEY.—We object to this as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

Q. The city of Fairbanks is an incorporated town?

A. It is.

Mr. CLARK.—I desire to call the Court's attention at this time to the last part of Section 26, Part 3 of Carter's Codes of Alaska, page 140, in which it says, after describing the laws relating to mining claims, it says—that the [28] reservation of a

roadway sixty feet wide, under the tenth section of the Act of May 14, 1898, entitled "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes" shall not apply to mineral lands or townsites.

Mr. McGOWAN.—The trading site was before the town was incorporated, but when the city of Fairbanks was incorporated, they took over the trading site and it was absorbed in the incorporated town. Captain Barnette staked what he called a trading-post. He then quitclaimed to various people, including the United States Government and this very land that this courthouse is on, condemnation was placed on record for this, fixing the width of the streets, and the courthouse site and all this ground was taken in and made a part of the incorporated town of Fairbanks. That being so and we being in possession of this waterfront at the time the town was incorporated, we have held title and held it by virtue of that possession.

Judge OVERFIELD.—Have you a deed from the townsite?

Mr. McGOWAN.—Yes, sir, we have a deed from the townsite.

Mr. BROWN.—These deeds were subsequent to the imposition of this license tax.

Mr. CROSSLEY.—Our contention is that all these deeds they now have to this property were issued subsequent to this action.

Witness excused.

Mr. McGOWAN.—We will call Mr. Heilig. [29]

**[Testimony of A. R. Heilig, for Defendant.]**

A. R. HEILIG, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. McGOWAN.)

Q. You incorporated the city of Fairbanks, did you not, or participated in the incorporation of it?

A. Well, I was clerk of the court at the time it was incorporated and of course am familiar with the proceedings, because they passed through my hands. I issued all the notices and prepared the orders of the Court, which are a matter of record, entries incorporating the town and defining its limits.

Mr. CROSSLEY.—We object to that answer as incompetent, irrelevant and immaterial and as not the best evidence.

Objection overruled. Plaintiff excepts.

Q. Explain in your own way the manner in which the town was incorporated and whether or not the townsite took in the ground involved in this present controversy.

A. The town was incorporated according to the provisions of our statute. It embraced, to my certain knowledge, because I have been around the boundaries, the tract of land now occupied by the N. C. stores, warehouses and wharves. Subsequently I secured another employment from the city council; after they were incorporated I was appointed townsite agent and procured for them a survey of the out-boundaries of the town of Fairbanks for the purpose of purchasing it from the government and procuring

(Testimony of A. R. Heilig.)

a patent. I then again familiarized with the tract of land which we sought to purchase and procured a survey of the outboundaries to be made by a surveyor appointed by the Surveyor-general of Alaska. That again included all of the land covered by [30] the stores and warehouse, and wharves of the Commercial Company. I then procured the appointment of a townsite trustee, Henry T. Ray, and attended to the proceedings, making entry and application for the purchase of the land for townsite purposes, all of which was done and the patent was issued to Mr. Ray from the Government, covering all of the land embraced within the official boundaries surveyed for patent. That patent also embraced the land of the Northern Commercial Company and its warehouse and the wharves. In that connection, as attorney for the townsite trustee, it became important as I thought for me to ascertain whether the so-called Barnette Trading Post had ever been perfected, because there were rights which might conflict with the townsite trustee's application to enter, which should be investigated. I satisfied myself that all pretense of claiming under the trading site had been abandoned; in other words, it had never been perfected and was practically forgotten. And I satisfied myself too from the agents of the Northern Commercial Company here that they chose to take their title from the townsite trustee under the patent received by him, and that is about as far as I personally know.

Q. The deeds were drawn, were they not, and delivered?



that is no dock or wharf fee?

Mr. McGOWAN.—Yes, sir, we have submitted a statement of that.

Mr. CROSSLEY.—And you didn't pay any such fee, dock fee or wharf fee, in any other part of Alaska?

Mr. McGOWAN.—No, sir, and we contend we don't have to.

(After argument.)

By the COURT.—The second matter, regarding the wharf, Judge Overfield and I desire to confer about that. Regarding the other matter neither of us has any doubt that the vessels are liable to that tax and as far as I am concerned, and I think Judge Overfield, the position of Mr. Crossley regarding "elsewhere" means elsewhere within the jurisdiction. If there is any difficulty about the interpretation [33] of that statute, I think it has been occasioned by the fact that counsel have followed the Carter's Code in quoting the law in their agreed statement. The official publication shows that word "a" to be "or." That would show that a vessel registered in Alaska, as these vessels are, is liable; that those vessels that run to southeastern Alaska and Southwestern, with headquarters in Seattle and registered there, that unless they paid the license or tax on their vessels, on their transportation line in the State of Washington, or Oregon, or California, then they would be liable here although they were registered there.

I will entertain a motion by counsel to change that word "a" to "or."

Mr. McGOWAN.—We consent to that—there is no question about that.

By the COURT.—With that stipulation that may be changed.

Mr. CROSSLEY.—The word “or” instead of “a”?

By the COURT.—Yes, sir.

Mr. CROSSLEY.—The Government makes the motion to make that change.

Motion granted. [34]

That after said testimony was closed, argument was made by the counsel for the respective parties, after which the Court took the matter under advisement.

That thereafter, and on the 24th day of August, 1911, the Court, by consent of counsel for plaintiff and defendant, made and entered an order in the words and figures as follows, to wit:

[Title of Court and Cause.]

**Order [Directing That Original Statement of Facts  
be Supplemented, etc.].**

The above-entitled action having come on for trial before the Court, and the Court having given its ruling upon the construction of the statute in controversy, whereby it ruled that the defendant is liable for the payment of a license fee or a tax of 10 cts per ton on freight handled on its wharf at Fairbanks, Alaska, consigned and belonging to persons or corporations other than the defendant herein, and it appearing to the Court that this action has been pending since the year 1906, and that in the interim defendant has not paid the said license fee

or tax upon the freight handled by it upon its wharf during each year, and for the purpose of avoiding multiplicity of actions and settling all differences between the parties to this action, in relation to the controversy herein, and so that the rights of the respective parties may be fully adjudicated up to the year 1911—the defendant having announced that he intends to appeal from the ruling of this Court aforesaid—and for the purpose of having all matters in controversy between said parties up to the present year made a part of the record herein, so that the same may be fully considered on appeal, and the attorneys for the respective parties having consented to the making of this order,

IT IS HEREBY ORDERED, that the original Statement of Facts filed herein be supplemented by [35] adding thereto the supplemental paragraph hereunto annexed, marked paragraph “XVI,” and that said paragraph shall be considered as a part, and portion of the original Statement of Facts filed in the above entitled action; and

IT IS FURTHER ORDERED that said original Statement of Facts need not be engrossed, and that this paragraph shall be considered as a part thereof, the verification of the same having been waived, and that the Clerk of the Court shall attach the same, together with this order to the original Statement of Fact filed in this action; and

IT IS FURTHER ORDERED that said Supplemental Paragraph be filed herein *nunc pro tunc* as



of the 18th day of August, 1911.

EDWARD E. CUSHMAN,  
PETER D. OVERFIELD,

Judges.

Dated August 24th, 1911. [36]

[Title of Court and Cause.]

**Supplemental Statement of Facts.**

Insert on page five (5) of original Statement of Facts and Submission Without Action, after paragraph XV, the following:

**XVI.**

That since the filing of the original Statement of Facts in this action and during the years 1907, 1908, 1909, 1910 and 1911, Defendant has been conducting a wharf in Fairbanks, in the same manner as set forth in the original statement of facts herein, and in connection with these years it is consented that the Court in determining this action, shall determine whether or not the said Defendant is liable to pay a license tax or fee on the amount of freight handled upon its wharf at Fairbanks, belonging, consigned to, or consigned by persons or corporations other than the defendant herein, during said years, and the amount thereof; that is to say, that the Court shall have jurisdiction in the present action to determine the controversy between the parties Plaintiff and Defendant from the year 1905 down to and including the year 1911.

Dated August 24, 1911.

McGOWAN & CLARK,  
Attorneys for Defendant.

The foregoing Supplement and Order are hereby consented to.

JAMES J. CROSSLEY,  
Attorney for Plaintiff.  
McGOWAN & CLARK,  
Attorneys for Defendant.

Filed in the District Court, Territory of Alaska, 4th Div. Aug. 24, 1911. C. C. Page, Clerk. By G. F. Gates, Deputy. *Nunc pro tunc* as of Aug. 18, 1911.

(Foregoing Order of Aug. 24, 1911, with Supplemental Statement of Facts attached, is endorsed: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 24, 1911. C. C. Page, Clerk. By G. F. Gates, Deputy.) [37]

That thereafter, and on the 24th day of August, 1911, the Court made and entered its interlocutory order, which was as follows:

[Title of Court and Cause.]

**Order [That Northern Commercial Co. is Liable for License Tax; Directing Filing of Amended Statement of Agreed Facts, etc.].**

This cause having come on for trial on the 19th day of August, 1911, before the Honorable Edward E. Cushman, Judge of the District Court for the Third Judicial Division of the Territory of Alaska, and the Honorable Peter D. Overfield, Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska, the plaintiff appearing by James J. Crossley, United States Attorney, and John K. Brown, Assistant United States Attorney,

and defendant appearing by Messrs. McGowan & Clark, its attorneys, and a jury trial having been expressly waived by the respective parties hereto in open court, and the Court having heard all the evidence of the respective parties bearing upon the question of the liability of the defendant to pay a license tax to the plaintiff of ten cents (10¢) per ton on freight handled on its wharf at Fairbanks, Alaska, as provided by section 460 of the Act of Congress, entitled "An Act to define and punish crime in the District of Alaska and to provide a Code of Criminal Procedure for said District," approved March 3, 1899, as amended by section 29, Title I of the Act of Congress entitled "An Act making further provision for a Civil Government for Alaska, and for other purposes," approved June 6, 1900; and the Court having on said day ruled and held that the defendant is liable for the payment of such license tax upon the freight handled on its said wharf at Fairbanks, Alaska, consigned and belonging to persons or corporations other than the defendant herein; and it further appearing that it is advisable that all the matters of difference between the plaintiff and the defendant arising out of the non-payment of said license tax for the years 1905, 1906, 1907, 1908, 1909, 1910 and 1911, be adjudicated in this action, and that the agreed statement of facts herein be amended accordingly [38] and filed *nunc pro tunc* as of the 18th day of August, 1911, and that further evidence will be necessary in order to show the amount of said license tax on the number of tons of freight belonging or consigned to or by

persons or corporations other than the defendant herein, for the several years mentioned in said amended and agreed statement of facts herein, and that such further evidence herein may be taken before a Referee and reported to this Court and James J. Crossley, Esq., United States Attorney for the Fourth Judicial Division of the Territory of Alaska on behalf of the United States, and Messrs. McGowan & Clark, attorneys for the defendant and on behalf of defendant, appearing this day in open Court, and consenting and agreeing to the entry of this order and to each and every one of its terms and conditions, save and except that counsel for defendant object to the Court as to any liability on its part for any license tax whatsoever, and except thereto.

NOW, THEREFORE, IT IS ORDERED, that the defendant, the Northern Commercial Company, a corporation, is liable to pay to the United States a license tax of ten cents (10¢) per ton, per annum, for the years 1905 to 1911, both inclusive, on the amount of freight handled upon its said wharf at Fairbanks, Alaska, belonging, consigned to, or consigned by persons or corporations other than the defendant herein.

IT IS FURTHER ORDERED that an amended statement of agreed facts be filed herein *nunc pro tunc* as of the 18th day of August, 1911, containing a statement of the facts in controversy between the parties hereto as to such license tax on the amount of freight handled on its said wharf at Fairbanks, Alaska, belonging or consigned to or consigned by persons or corporations other than the defendant

herein, for the years 1905 to 1911, both inclusive instead of for the years 1905 and 1906, and that when judgment shall be entered herein, such judgment shall be for the whole amount of said license tax for the years 1905 to 1911, both inclusive; and it is further ordered that Guy B. Erwin, Esq., an attorney of this Court, be and he is hereby appointed as Referee herein to take and report the above evidence and he is hereby ordered to proceed to hear proofs and take testimony as to any and all matters and things involving or respecting the amount of such license tax for said years, and that such Referee report said testimony to this [39] Court on or before the 31st day of March, 1912, and that such Referee be paid for his compensation the sum of \$15.00 per day for each and every day necessarily spent by him in the performance of his duties as such Referee and \$7.50 a day for any fraction of a day so spent, besides \$1.00 per page for a transcript of the testimony, exclusive of any original exhibits thereto attached, and that such compensation shall become a part of the costs in this case and may be taxed by the prevailing party, if paid by it, against the losing party as a portion of its taxable costs and disbursements in this action.

It is further ordered that either of the Judges above named, or any Judge of the District Court of the Territory of Alaska, having or exercising jurisdiction within the Fourth Judicial Division of said Territory may make, enter and sign any order hereinafter made and entered in this cause or any judgment herein.



It is further ordered that this cause be and it is hereby continued for further hearing until after the filing by the above-named Referee of his report of the testimony taken by him herein, as herein provided, each of the parties hereto consenting and agreeing in open Court that such continuance shall in no wise affect the jurisdiction of this Court to proceed further in the case upon the coming in and filing of said Referee's report.

Done in open court this 24th day of August, 1911.

PETER D. OVERFIELD,

EDWARD E. CUSHMAN,

District Judges.

Entered in Court Journal No. 11, page 391.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Aug. 24, 1911. C. C. Page, Clerk. By H. C. Green, Deputy.

To a portion of which interlocutory order and judgment defendant excepted and presented and had allowed a Bill of Exceptions, which was in the words and figures as follows: [40]

[Title of Court and Cause.]

**Bill of Exceptions [to Interlocutory Order].**

BE IT REMEMBERED that on the 24th day of August, 1911, during the trial of the above-entitled action the Court made and filed its order, wherein it ruled and held that the defendant is liable for the payment of such license tax upon the freight handled upon its said wharf at Fairbanks, Alaska, consigned and belonging to persons or corporations other than



the defendant herein, and ordered:

“That the defendant, the Northern Commercial Company, a corporation, is liable to pay to the United States a license tax of ten cents (10¢) per ton, per annum, for the years 1905 to 1911, both inclusive, on the amount of freight handled upon its said wharf at Fairbanks, Alaska, belonging, consigned to, or consigned by persons or corporations other than the defendant herein.”

To which ruling and the part of said order above specified the defendant then and there excepted, and does now except to the same, and assigns the same as error.

McGOWAN & CLARK,  
Attorneys for Defendant.

Dated August 24, 1911.

ORDER.

The above exception is hereby allowed and the foregoing Bill of Exceptions is hereby settled and allowed.

Done in open court this 24th day of August, 1911.

PETER D. OVERFIELD,  
EDWARD E. CUSHMAN,

Judges.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Aug. 24, 1911. C. C. Page, Clerk. By G. F. Gates, Deputy. [41]

That thereafter such proceedings were had that the matter came on regularly for hearing before the Honorable Guy B. Erwin, the referee appointed by

this Court, on the 1st day of February, 1912, at the hour of 11 o'clock in the forenoon, at the office of said referee in the Red Cross Building, in the town of Fairbanks, pursuant to the notice of hearing issued and served on the attorneys for the respective parties by the Referee on the 20th day of January, 1912; Honorable James J. Crossley, and the Honorable John K. Brown, appeared for the United States, and John A. Clark, Esq., appeared for the defendant; at which hearing and subsequent hearings, the following proceedings were had and testimony was taken. [42]

[Title of Court and Cause.]

**Report of Proceedings and Testimony Before  
Referee.**

This matter came on before the Referee on the 1st day of February, 1912, at the hour of 11 o'clock in the forenoon, at his office in the Red Cross Building, pursuant to the Notice of Hearing issued and served on attorneys for the parties by Referee on the 20th day of January, 1912, J. J. Crossley and J. K. Brown appearing for the United States, and John A. Clark appearing for the defendant.

Hearing continued on motion of attorney for defendant until 2 o'clock P. M.

The parties appeared by their attorneys, aforesaid, at 2 o'clock P. M. on the 1st day of February, and defendant files a petition for continuance to the 20th day of February, 1912, at 2 o'clock P. M. Continuance granted until February 5th, 1912.

On February 5th, 1912, the parties by their respec-

tive attorneys aforesaid appeared, and at the request of attorney for defendant, the matter was continued until February 6th, 1912.

On February 6th, 1912, the parties appeared before the referee by their attorneys above named, and on motion of attorney for the defendant and by consent, the matter was continued until the 20th day of February, 1912.

On February 20th, 1912, the matter was continued by consent of attorneys until March 15th, 1912.

On March 15th, 1912, the parties appeared by their attorneys aforesaid, and the following proceedings were had: [43]

By Mr. CLARK.—I now offer for the inspection of the referee, and as evidence to be hereafter sworn to by Mr. Richmond or Mr. McGowan immediately upon their arrival from San Francisco, or by Mr. J. R. Fowle, if he can secure the necessary data from his office to enable him to swear to same, a tabulated list containing a statement of the freight handled over the Northern Commercial Company's dock at Fairbanks, Alaska, for the seasons 1905 to 1911, inclusive, save and except the freight to Fairbanks from points other than Dawson and St. Michael for the year 1905, and freight billed outward from Fairbanks in the year 1905. This offer to be made at this time for the purpose of enabling the referee to prepare a general form of report subject to such examination, direct and cross, as may be deemed advisable to be had from Mr. Richmond, Mr. McGowan or Mr. Fowle, when said witnesses are sworn to testify in said matter.

Mr. CROSSLEY.—To which we object as incompetent, irrelevant and immaterial, for the reason that the same is not properly identified or sworn to by witnesses competent to testify to the same, there being no witness present to identify and swear to the same.

By REFEREE.—Statement accepted for the purpose mentioned in offer of defendant.

Mr. CROSSLEY.—On behalf of the Government we have no objection that the referee shall have these papers for the purpose of familiarizing himself with the situation in order to formulate his report when the same is properly submitted as evidence.

Hearing continued by consent until 22d March, 1912, at 2 o'clock P. M.

On 22d March, 1912, at request of defendant and by consent hearing continued until March 25th, 1912, at 2 P. M. [44]

On 25th March, hearing continued until April 1st, 1912, at 2 P. M. by consent of parties.

On April 1st, 1912, by agreement of counsel, hearing continued to await the arrival in Fairbanks of Volney Richmond, superintendent of the defendant corporation, and Thomas A. McGowan, one of its attorneys.

On May 8th, 1912, at 2 o'clock P. M. the parties appeared before the referee, Mr. J. K. Brown appearing for plaintiff, and Mr. Thomas A. McGowan appearing for defendant, and the following proceedings were had:

**[Testimony of Volney Richmond, for Defendant,  
Taken Before Referee.]**

VOLNEY RICHMOND, a witness produced by and on behalf of the defendant, being first duly sworn by the Referee, testified as follows:

(By Mr. McGOWAN.)

Q. You are superintendent of the Northern Commercial Company?     A. I am.

Q. And familiar with the dock opposite the plant in the city of Fairbanks?     A. I am.

Q. I hand you a statement showing the tonnage handled over this dock between the years 1905 and 1911, inclusive. Where was that statement prepared?     A. In San Francisco, California.

Q. Under the supervision of myself?

A. It was.

Q. And it is an extract from the records of our home office?     A. It is.

Mr. McGOWAN.—We now offer this statement in evidence.

Q. (Mr. BROWN.) Did you verify this Mr. Richmond from the books?

A. I did not check it. It was made up by one of the office force and compared.

Q. You have no personal knowledge of the correctness of the books from which this was taken?

[45]

A. No, I am not a bookkeeper.

By Mr. McGOWAN.—But you have personal knowledge of the freight handled at Fairbanks during those years?



(Testimony of Volney Richmond.)

A. I have personal knowledge of it in an approximate way.

Q. And approximately, from your personal knowledge, are those figures correct?      A. It is correct.  
(By Mr. BROWN.)

Q. But what does this cover, Mr. Richmond, does it cover any of the freight or cargo consigned to the Northern Commercial Company, or merely other parties than the Northern Commercial Company?

A. This is freight other than the Northern Commercial Company freight.

Q. Now, I will ask you if the Northern Commercial Company does not receive considerable freight at Fairbanks which is really consigned in the name of the Northern Commercial Company for other parties.      A. They do not—none whatever.

Q. So this statement represents the number of tons of freight billed into Fairbanks to other parties than the Northern Commercial Company and received over the Northern Commercial Company's wharf?      A. It does.

Q. And also freight billed from Fairbanks to other points and handled over the Northern Commercial Company's wharf at Fairbanks not belonging to the Northern Commercial Company?      A. It does.

Q. You have every reason to suppose that this is correct?

A. I am practically absolutely sure it is. It was made by the head accountant of the Northern Navigation Company.

Q. And this is a correct abstract of the books of



(Testimony of Volney Richmond.)  
the Northern Commercial Company?

A. It is, of the Northern Commercial Company and the Northern Navigation Company.

Q. The Northern Commercial Company has been the owner of that dock from 1905 to 1911.

A. They have. [46]

Mr. McGOWAN.—We now offer in evidence, and ask that it be marked “Defendant’s Referee Exhibit No. 1.”

(Statement accepted and marked by Referee.)  
[47]

**Defendant's Referee Exhibit No. 1.****STATEMENT OF OUTSIDE FREIGHT HANDLED OVER NORTHERN  
COMMERCIAL CO. DOCK.**

Fairbanks. Seasons 1905-1911 Inclusive.

Season.	Billed from St. Michael, Tons.	Billed from Dawson, Tons.	Billed from all other points. Tons.	Billed from Fairbanks, Tons.	Total Tons.
1905	1571.42	2107.73	#	#	3679.15
1906	2475.58				
	Landed at Chena				
	302.00				
	2173.58	2442.92	102.10	231.12	4949.72
1907	1886.00				
	do. 202.00				
	1684.00	358.81	36.64	315.88	2395.33
1908	913.88				
	" 42.00				
	871.88	195.40	46.94	495.66	1609.88
1909	5975.46				
	" 1530.75				
	4444.71	238.00	70.85	610.18	5363.74
1910	1044.24				
	" 193.35				
	850.89	137.03	41.85	1220.94	2250.71
1911	1071.39				
	" 364.11				
	707.28	157.78	62.81	423.02	1350.89
Total	12303.76	5637.67	361.19	3296.80	21599.42

#— No report of local freight inward or outward from Fairbanks season 1905; figures will have to be obtained, from Fairbanks Office.

Home Office records for season 1905 were destroyed by fire.

San Francisco, Feb. 15th, 1912.

(Testimony of Volney Richmond.)

(By Mr. McGOWAN.)

Q. Mr. Richmond, during the season of 1905 it appears on this exhibit, "Defendant's Referee Exhibit No. 1," under the heading "Billed from all other points Tons" blank, "Billed from Fairbanks Tons" blank. Explain, if you please, why those figures are not contained in that exhibit.

A. All the records of the Northern Commercial Company were destroyed in the earthquake of 1905 at San Francisco, and all the records showing the amount of freight handled by the Northern Commercial Company over the dock in Fairbanks in the year 1905 were destroyed by the flood in the spring of 1911 at Fairbanks, the records being on the dock. The balance of the statement is correct.

Q. And for that reason the company were unable to obtain the records for that year showing freight billed from other points and freight billed from Fairbanks?     A. They were.

Q. Now, then, Mr. Richmond, you arrived in Fairbanks at what time?

A. On the 15th day of March, 1905.

Q. Then you were here yourself during the summer of 1905?     A. I was.

Q. In looking over the list under those two heads "Billed from all other points" and "Billed from Fairbanks" during that year, can you tell approximately how many tons of freight you in your judgment would deem as having been handled under the two blank heads, approximating from the freight handled in other years?

(Testimony of Volney Richmond.)

A. To make it liberal, billed from all other points in 1905 would not exceed 100 tons. Billed from Fairbanks in 1905 the limit would be 300 tons.

By Mr. BROWN.—It is hereby consented by counsel for the Government that the blank spaces left opposite the season 1905 and under the heading “Billed from all other points—tons” be filled in with the figures “100,” and that for the same year that the blank space under the heading “Billed from Fairbanks Tons” be filled in with the [49] figures “300,” indicating respectively 100 and 300 tons, and that the 400 tons so added be added to the total of 21,599.42 tons as shown on the exhibit.

(By Mr. McGOWAN.)

Q. The figures in red ink as shown on the exhibit just offered indicate what?

A. The freight that was billed and delivered at Chena, Alaska, and did not come over the Fairbanks dock.

Q. It was landed at Chena as indicated on the exhibit? A. Yes, sir.

By Mr. BROWN.—No cross-examination.

That the testimony was then closed and the matter submitted to said Referee for his findings and decision, and thereafter and on or about the 15th day of May, 1912, said Referee, in pursuance to an Order of Court heretofore referred to, submitted to the above-entitled court his Report and Findings, which was as follows, to wit:

[Title of Court and Cause.]

### **Report of Referee.**

Pursuant to an order of this Court in this action, made on the 24th day of August, 1911, by Peter D. Overfield and Edward E. Cushman, District Judges, appointing the undersigned, Guy B. Erwin, Referee, to hear proofs and take testimony as to any and all matters and things involving or respecting the amount of license tax due by defendant to the United States of America for freight handled over defendant's wharf at Fairbanks, Alaska, during the years 1905, 1906, 1907, 1908, 1909, 1910 and 1911, inclusive, I, the undersigned Referee, beg leave to report as follows: [50]

#### **I.**

That I have been attended by attorneys for the respective parties, the United States of America appearing by J. J. Crossley, U. S. District Attorney, and John K. Brown, Asst. U. S. District Attorney, and the defendant appearing by its attorneys, Messrs. McGowan & Clark, and I proceeded to a hearing of the matter so referred.

#### **II.**

I further report that on such hearing Defendant's Referee, Exhibit No. 1, being a statement of Outside Freight handled over Northern Commercial Company's dock, was offered by defendant's attorneys, accepted by me and filed as such, and that Mr. Volney Richmond, a witness produced by defendant, was sworn by me and testified in said matter, and a transcript of his testimony, together with a record of all

proceedings, and said exhibit are herewith filed with the Clerk of said Court as a part of this report.

### III.

That after a full examination and consideration of said matter I find as follows:

(1) That during the year 1905, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 4079.15 tons, upon which it became liable to pay to the United States of America a license tax of ten cents per ton, amounting to \$407.-915.

(2) That during the year 1906, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 4949.72 tons, upon which it became liable to pay to the United States of America a license tax of ten cents per ton, amounting to \$494.972.

(3) That during the year 1907, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 2395.33 tons, upon which it became liable to pay to the United States of America a license tax of ten cents per ton, amounting to \$239.-533.

(4) That during the year 1908, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 1609.88 tons, upon [51] which it became liable to pay to the United States of America a license tax of ten cents per ton, amounting to \$160.988.

(5) That during the year 1909, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 5,363.74 tons, upon which it became liable to pay to the United States of America a



license tax of ten cents per ton, amounting to \$536.-374.

(6) That during the year 1910, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 2250.71 tons, upon which it became liable to pay to the United States of America, a license tax of ten cents per ton, amounting to \$225.-071.

(7) That during the year 1911, the Northern Commercial Company handled over its dock at Fairbanks, Alaska, 1350.89 tons, upon which it became liable to pay to the United States of America a license tax of ten cents per ton, amounting to \$135.089.

#### IV.

That said Northern Commercial Company is liable to pay to the United States of America License Tax on the total amount of freight handled upon its wharf at Fairbanks, Alaska, for the years 1905, 1906, 1907, 1908, 1909, 1910, and 1911, inclusive; belonging, consigned to or consigned by persons or corporations other than the defendant herein, on 21,999.42 tons at the rate of ten cents per ton amounting in the aggregate, to Two Thousand One Hundred Ninety-nine Dollars and Ninety-four cents (\$2,199.94).

Dated the 15th day of May, A. D. 1912.

GUY B. ERWIN,  
Referee.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 16, 1912. C. C. Page, Clerk. By H. C. Green, Deputy.

That thereafter and on or about the 31st day of May, 1912, defendant herein served and filed its mo-

tion to set aside the Report of the Referee, and objections to his findings, which were as follows, to wit:  
[52]

[Title of Court and Cause.]

**Motion to Set Aside Report of Referee.**

Now comes the defendant above named and moves the Court to set aside the report, and the findings of fact and conclusions of law set forth therein, and each and all thereof, made by Guy B. Erwin, the Referee heretofore appointed herein, and objects to the adoption thereof, on the following grounds, to wit:

I.

That the findings numbered 1 to 7, inclusive, as set forth in paragraph III of said Referee's report, are not sustained by the evidence and are contrary thereto in the following particulars, to wit:

(a) That the evidence as heretofore taken before the Court and the Referee, fails to show that the defendant was prosecuting, or attempting to prosecute the business of conducting "public docks, wharves, and warehouses," where it handled or stored goods.

(b) That the evidence shows that the defendant owned a dock or wharf at Fairbanks, Alaska, on which was constructed a shed, and that the same was used for its private use only; and that it made no dock, wharf, or warehouse charges of any kind for goods handled or landed over said wharf or dock.

(c) That it appears from the uncontradicted evidence given at the trial that the defendant maintained said dock or wharf and shed for its own exclusive use, and not for the use of the public or others.

(d) That the evidence introduced at the trial and

before the Referee shows that no charge of any kind, either wharf, dock, or warehouse, was made by the defendant on the tonnage set forth [53] in the findings of the Referee aforesaid.

(e) That the evidence introduced before the Court and the Referee fails to show that the defendant maintained or prosecuted or attempted to maintain or prosecute, the business of conducting public docks, wharves, or warehouses, at the town of Fairbanks aforesaid, but, on the contrary, the evidence shows that the docks, wharves, and warehouses conducted by defendant were private docks, wharves, and warehouses, maintained and conducted by it for the purpose of facilitating the handling of its own freight, and that, where freight which belonged to persons other than defendant was handled thereon, the same was handled without charge of any kind.

(f) That the evidence shows that the defendant did not permit steamboats other than those delivering, freight to itself to land at or use the docks, wharves, and warehouses aforesaid, and that it maintained said docks, wharves, and warehouses for its own private use.

## II.

That paragraph IV of said Report is not sustained by the evidence and is contrary thereto, for the reason that it appears from the evidence that no charge was made by defendant for handling the freight set forth in said finding, and that it permitted the landing of said freight at its wharf at Fairbanks simply for the purpose of accommodating the persons and firms to whom said freight was consigned.

## III.

That defendant now moves this Court to set aside findings 3 and 4 of said Referee and to refuse to adopt the same, on the ground that each, every and all of said findings are contrary to the evidence in the case, for the reasons hereinbefore set out.

## IV.

Defendant further objects to the report of said Referee, and all thereof, excepting the transcript of testimony filed by him, [54] on the ground that the order appointing said Referee did not authorize the Referee to make findings of fact and conclusions of law, but simply provided that the Referee proceed to hear proofs, and take testimony and report the same to the Court, so that the Court could find thereon, and defendant does now move to set aside all the findings made by said Referee wherein he finds upon the facts and the law.

## V.

Defendant excepts to findings numbered 1 to 7, inclusive, as set forth in paragraph III of said Referee's report, and to each and all thereof, on the ground that the same are not authorized by the order of reference in this matter.

## VI.

Defendant excepts to paragraph IV of said Referee's report, and the whole thereof, on the ground that the same is not authorized by the order of reference in this matter.

## VII.

Defendant now moves that all parts of the report of said Referee, finding on facts and establishing

conclusions of law be set aside, and that the Court consider only that part of said Referee's report wherein he sets forth the testimony as taken before him.

Dated at Fairbanks, Alaska, this thirty-first day of May, A. D. one thousand nine hundred twelve.

McGOWAN & CLARK,  
Attorneys for Defendant.

Service of the within Motion to set aside Report of Referee and receipt of a copy thereof acknowledged this 31st day of May, 1912.

JAMES J. CROSSLEY,  
U. S. District Attorney,  
Attorney for Plaintiff.

[Endorsed]: No. 657. (Title of Court and Cause.)  
Motion to Set Aside Report of Referee. Filed in the District Court, Territory of Alaska, 4th Div. May 31, 1912. C. C. Page, Clerk. By H. C. Green, Deputy. [55]

That thereafter and on the 1st day of June, 1912, the plaintiff duly filed its motion to confirm the Referee's report and for judgment thereon, which motion is in the words and figures as follows, to wit:

[Title of Court and Cause.]

**Motion to Confirm Referee's Report and for  
Judgment Thereon.**

Now comes the above-named plaintiff by James J. Crossley, Esq., United States Attorney for the Fourth Judicial Division of the Territory of Alaska, and John K. Brown, Esq., Assistant United States Attorney, and moves this Honorable Court that the report of the Referee, Guy B. Erwin, Esq., filed



herein on the 16th day of May, 1912, be in all respects approved and confirmed, and that judgment be entered upon said report of said Referee in favor of the above-named plaintiff and against the above-named defendant for the sum found by the said Referee in his said report to be due from the said defendant to the said plaintiff for the license tax or fee of ten cents (10¢) per ton upon the freight handled upon the public wharf of the defendant Northern Commercial Company at Fairbanks, Alaska, during the years 1905 to 1911, inclusive, amounting in all to the sum of \$2,199.94, together with the costs and disbursements of this action.

This motion is based upon said report of the said Referee and all the records, proceedings and files in the above-entitled action.

JAMES J. CROSSLEY,  
United States Attorney.

JOHN K. BROWN,  
Assistant United States Attorney.

[Endorsed]: No. 657. Title of Court and Cause.  
Filed June 1, 1912. [56]

That thereafter and on the 1st day of June, 1912, the motion of the defendant to set aside the Report of the Referee herein came on regularly for hearing before Honorable Peter D. Overfield, when James J. Crossley, United States District Attorney, and John K. Brown, Assistant United States Attorney, appeared for and on behalf of the plaintiff, and Thomas A. McGowan, Esq., appeared for and on behalf of the defendant, when the following proceedings were had:



**[Exceptions to Findings of Referee, etc.]**

Mr. McGOWAN.—In this case, if your Honor please, we except to the findings of the Referee. This is the same question over again that we argued before the Court about the first suit. We also make the same objection to the Referee's findings: that the order of reference did not authorize the Referee to make findings of fact and conclusions of law. The findings of fact, if made at all, should be made by the Court, and upon that understanding case 657 is submitted.

COURT.—No doubt but what your reading of the order as to making findings is correct, but I shall at least overlook the formality, and after I have disposed of this other matter, I shall no doubt adopt his findings as my findings.

Mr. McGOWAN.—I shall state as to that, your Honor, that the District Attorney had prepared a judgment, and we had agreed to the form, so as to save the Court trouble. We reserved our exception to the substance, but waived objection as to form. And so as to have these as the findings of the Court, in order that when this case goes before the Circuit Court of Appeals, we can say that these are the findings of the Court and not of the Referee.

COURT.—There is no question about that, as in divorce proceedings, where the Referee submits findings of fact when not asked to do so.

Mr. BROWN.—To save time, your Honor, I will submit judgments as to the transfer of licenses.

COURT.—The record may show that the other objections—take, for [57] instance, the first objec-

tion that you argued to the Court—will be denied.

Mr. McGOWAN.—To which ruling we except.

COURT.—The motions on the question with reference to striking the Referee's conclusions of law are denied, and accepted to this extent: That the Court after consideration will, independent of the fact that they are the Referee's findings, but probably using them as a guide, accept them as the findings of this Court, so modified as the subsequent ruling on the question of the transfer of the license from the steamer "Sarah" to the steamer "Hannah" may direct.

Mr. McGOWAN.—To which ruling defendant excepts.

COURT.—The exception is allowed.

Mr. McGOWAN.—And that goes to both cases, your Honor, the ruling as to our objections to the Referee's findings of fact and conclusions of law?

The COURT.—Yes. And you will have until Tuesday to prepare authorities on the matter of the transfer of the steamer license.

That thereafter, in pursuance of its ruling theretofore made, the Court did, on the 5th day of June, 1912, make and enter its Judgment, to which Judgment the defendant then and there excepted.

That thereafter, and within the time prescribed by law, the defendant in the above-entitled action served and filed its motion for a new trial, which was as follows, to wit: [58]

[Title of Court and Cause.]

**Motion for New Trial.**

To the Above-named Plaintiff, to James J. Crossley, Esq., United States District Attorney, and to John K. Brown, Esq., Assistant United States District Attorney.

You will please take notice that the above-named defendant now moves the above-named court to set aside its decision and judgment in the above-entitled action and to grant a new trial therein, on the following grounds, to wit:

(1) Insufficiency of the evidence to justify the decision and judgment of the Court in said action, and that said decision and judgment are against law.

(2) Errors in law occurring at the trial of said action and excepted to by the defendants.

This motion will be made upon the pleadings and all proceedings had and taken in this action, on file in the office of the Clerk of this Court, and at the hearing defendants will rely upon the following grounds:

**I.**

Insufficiency of the evidence to justify the decision of the Court in this that the uncontradicted evidence shows that the defendant was not conducting either a public dock, wharf, or warehouse, but, on the contrary, shows that the defendant owned a private dock or wharf, on which was constructed a shed, which was used for its private use only, and that it made no dock, wharf, or warehouse charges of any kind for goods handled over said private wharf or dock, and in this connection the defendant relies upon all of

the grounds set forth in its motion to set aside the Report of the [59] Referee herein, and upon the uncontradicted evidence, which fails to show that the defendant conducted either a public wharf, dock or warehouse.

## II.

Errors of law occurring at the trial of said action and duly excepted to by the defendant, in that:

(a) The Court erred in holding that the defendant conducted a public wharf, warehouse, or dock.

(b) The Court erred in holding that the defendant was liable for a license tax of ten cents a ton on freight consigned to others than the defendant handled on its said public wharf at Fairbanks, Alaska, for the reason that the evidence fails to show that said defendant conducted a public wharf.

(c) The Court erred in approving and confirming the report of the Referee and in adopting the same as its findings of fact and conclusions of law.

(d) The Court erred in finding that there was due to plaintiff from the defendant the sum of \$2,199.94, or any other sum, on the total amount of freight handled over its said public wharf at Fairbanks, Alaska.

(e) The Court erred in adjudging and decreeing that the plaintiff have and recover from the defendant the sum of \$2,199.94, or any other sum whatsoever.

(f) The Court erred in adopting the report of the Referee in the above-entitled matter.

Dated at Fairbanks, Alaska, this sixth day of June,

A. D. one thousand nine hundred and twelve.

McGOWAN & CLARK,

Attorneys for Defendants.

[Endorsed]: No. 657. (Title of Court and Cause.)  
Motion for a New Trial. Filed in the District Court,  
Territory of Alaska, 4th Div. Jun. 6, 1912. C. C.  
Page, Clerk. By H. C. Green, Deputy. [60]

After argument on said motion for new trial, the  
said Court, on the 6th day of June, 1912, then and  
there overruled and denied said motion for new trial,  
and made and entered its order denying the motion  
for new trial, which said order was as follows, to wit:

[Title of Court and Cause.]

**Order Denying Motion for New Trial.**

The defendant's motion for a new trial coming on  
by consent to be heard on this date, Thos. A. Mc-  
Gowan, Esq., of the firm of McGowan & Clark, ap-  
pearing in favor of said motion, and John K. Brown,  
Assistant United States Attorney, appearing in oppo-  
sition thereto, and after hearing and consideration  
by the Court;

It is ordered that the defendant's motion for a new  
trial in the above-entitled action be, and the same is,  
hereby denied.

The defendant then and there excepted to the rul-  
ing of the Court and its exception is hereby allowed.

Done at Fairbanks, Alaska, this sixth day of June,  
A. D. one thousand nine hundred twelve.

PETER D. OVERFIELD,

District Judge.

Entered in Court Journal No. 12, page 57.



[Endorsed]: No. 657. (Title of Court and Cause.) Order Denying Motion for New Trial. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 6, 1912. C. C. Page, Clerk. By H. C. Green, Deputy.

To which ruling of the Court and order denying said motion for new trial the defendant then and there excepted, and said exception was allowed by the Court. [61]

And now, in furtherance of justice and that right may be done the petitioner, the Northern Commercial Company, defendant, in the above-entitled action, presents the foregoing Bill of Exceptions in this cause and prays that the same may be settled and allowed and signed and certified by the Judge of this Court in the manner prescribed by law.

McGOWAN & CLARK,

Attorneys for Defendants.

**Stipulation [Concerning Bill of Exceptions].**

It is hereby stipulated as follows:

(1) That, within the time allowed by law, as extended by stipulations of counsel and confirmed by order of Court, the foregoing bill of exceptions was served upon plaintiffs by defendants' counsel, and the attorneys for plaintiff do hereby admit the due and timely service thereof.

(2) That the foregoing Bill of Exceptions may be settled and allowed by the Court as the bill of exceptions to be used on the appeal from the judgment made and entered in the above-entitled cause, whether said appeal be prosecuted by writ of error, or by appeal direct, or by both; attorneys for plain-



tiff hereby expressly agreeing that, inasmuch as counsel for both sides are in doubt as to whether said appeal should be prosecuted by an appeal direct, or by writ of error, or by both, therefore it is stipulated that the foregoing bill of exceptions, when settled and allowed, may be used by the defendants on any appeal that may be prosecuted from the judgment in this action, whether the same shall be prosecuted by appeal direct, or by writ of error, or by both, and that, in the event of a dismissal of either the appeal direct or of the writ of error, thereupon this bill of exceptions shall stand as the bill of exceptions to be used on the hearing in the Court of Appeals in whichever form [62] the same may be heard.

(3) That the foregoing bill of exceptions may be filed on this date in the office of the clerk of the above-entitled court, at Fairbanks, Alaska, and shall thereupon be mailed by the Clerk to Hon. Peter D. Overfield, formerly Judge of the above-entitled Court, but now Judge of the Third Judicial Division of the Territory of Alaska, at Valdez, Alaska, for his order settling and allowing the same; and that, pending the return thereof, the defendants' time for having the foregoing bill of exceptions settled and filed shall be extended accordingly; the attorneys for the plaintiff hereby agreeing that it shall not be necessary for defendants to procure further stipulations or orders extending the time to settle and file the foregoing bill of exceptions, and hereby expressly consenting that the said time shall be extended until the return of the said Bill of Exceptions as aforesaid.

Dated at Fairbanks, Alaska, this 19th day of November, 1912.

JAMES J. CROSSLEY,  
U. S. District Attorney,  
Attorney for Plaintiff.  
By JOHN K. BROWN,  
Asst. U. S. District Attorney.  
McGOWAN & CLARK,  
Attorneys for Defendants. [63]

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[Title of Court and Cause.]

**Order Settling and Allowing Bill of Exceptions.**

On this ——— day of ———, 1912, and within due time, the defendants in the action here entitled, by their attorneys, Messrs. McGowan & Clark, duly presented the foregoing bill of exceptions for settlement and allowance, in the manner prescribed by law and the practice of the above-named court; and it appearing to the Court, from the stipulation of counsel, that said bill of exceptions has been heretofore duly served and filed within the time allowed by law, and that the same is true and correct in all respects and contains all the material, testimony, evidence and exhibits, and other proof whatsoever, introduced by either party during the hearing of said cause; and the Court being fully advised in the premises;

It is ordered that the said bill of exceptions be, and the same is, hereby allowed, settled, approved, and signed as the bill of exceptions for use on appeal in the above-entitled cause, and that the same be made a part of the record in said cause;

It is further ordered that the said bill of exceptions

is settled and allowed as the bill of exceptions for use on the hearing of any appeal that may be prosecuted from the judgment in the above-entitled cause, whether the same be prosecuted by writ of error, or by appeal direct, or by both.

Done in open court, at Juneau, Alaska, on this 9th day [64] of December, A. D. 1912.

PETER D. OVERFIELD,  
District Judge.

Entered in Court Journal No. 12, page 214.

[Endorsed]: Original. No. 657. District Court, Fourth Division, Territory of Alaska. United States of America vs. Northern Commercial Company. Bill of Exceptions. Filed per Stipulation in the District Court, Territory of Alaska, 4th Div. Nov. 19, 1912. C. C. Page, Clerk.

In the District Court for the District of Alaska, Division No. 1. Filed Dec. 9, 1912. E. W. Pettit, Clerk. [65]

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[Title of Court and Cause.]

**Petition for Writ of Error.**

The defendant, feeling itself aggrieved by the judgment of the Court made and entered in the above-entitled cause on the fifth day of June, A. D. one thousand nine hundred twelve, wherein and whereby the above-named court rendered judgment against said Northern Commercial Company for the sum of two thousand one hundred ninety-nine dollars ninety-four cents, together with costs.

Now come Messrs. McGowan & Clark, its attor-

neys, and petition this Honorable Court for an order, allowing this defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, according to the laws in that behalf made and provided;

And whereas the said defendant desires a stay of execution pending the hearing of the said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, now, therefore, said defendant petitions that an order be made, fixing the amount of security which said defendant shall give and furnish on said writ of error, and that, on the giving of such security, all further proceedings in this Court may be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

McGOWAN & CLARK,

Attorneys for Defendant.

May 19, 1913.

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Petition for Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [66]

[Title of Court and Cause.]

**Petition for Appeal.**

Comes now the defendant, who, conceiving itself aggrieved by the judgment and decree of this Court, made and entered on the fifth day of June, A. D. one thousand nine hundred twelve, in the above-entitled cause, in the above-named court, does hereby appeal from the said judgment and decree, and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of error filed herein, and appellant prays that this appeal be allowed and that a transcript of the records, proceedings, and papers on which said judgment and decree was made, together with all pleadings and the exhibits annexed thereto, testimony and proofs adduced in the case, judgments whether interlocutory or final, bill of exceptions, final decree, notice of appeal, and assignment of error, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California;

Defendant further prays that an order be made, fixing the amount of security which appellant shall give and furnish on said appeal, and that, on the giving of such security, all further proceedings in this Court shall be suspended and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner shall ever pray.



Dated on this 19th day of May, A. D. one thousand nine hundred thirteen.

McGOWAN & CLARK,

Attorneys for Defendant.

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Petition for Appeal. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [67]

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[Title of Court and Cause.]

**Assignment of Errors.**

TO BE USED ON WRIT OF ERROR AND  
DIRECT APPEAL AND BOTH.

Comes now the defendant in the above-entitled cause, being the plaintiff in error or appellant, and assigns the following errors as having been committed by the above-named Court on the trial of the above-entitled action, which errors the said defendant intends to, and does, rely upon in its writ of error and appeal and both, to be prosecuted in the United States Circuit Court of Appeals for the Ninth Circuit.

(1) The Court erred in deciding (order of Judges Cushman and Overfield of date 24 August, 1911),



“That the defendant, the Northern Commercial Company, a corporation, is liable to pay the United States a license tax of ten cents a ton per annum for the years 1905 to 1911, both inclusive, on the amounts of freight handled upon its wharf at Fairbanks, Alaska, belonging to, consigned to, or consigned by persons or corporations other than the defendant herein.”

(2) The Court erred in its order of 24 August, 1911, by referring the said action to a referee for an accounting, and in compelling the defendant herein to enter into an accounting before said Referee.

(3) The Court erred in its said order of 24 August, 1911, in determining that the defendants were liable to pay any license tax and in not finding in favor of the defendant and dismissing the said action.

(4) The Court erred in its said order and in its final judgment herein in determining that the defendant was liable under that part of section 460 of the Code of Criminal Procedure [68] of the District of Alaska set forth in paragraph 2 of the Statement of Facts and Stipulation for Submission Without Action.

(5) The Court erred in finding against the contention of the defendant set out in paragraphs 4, 5, 6, 7, and 8 of said Statement of Facts and Stipulation for Submission Without Action, to wit, the defendant contended that it did not maintain or conduct a public dock, wharf, or warehouse at Chena or Fairbanks, but that it did maintain at Fairbanks warehouses, within which it stored merchandise belonging to it and which it transported by its steamers

from points outside of Alaska to the town of Fairbanks, and that it had a wharf and warehouse on the river bank in front of its premises in Fairbanks, at which steamers owned by it landed and unloaded the freight belonging to it and its shippers, but that no wharfage charge, dockage charge, or storage charge was made for freight so landed upon said wharf; that said defendant was not engaged in the business of prosecuting or attempting to prosecute public docks, wharves, or warehouses within the Territory of Alaska, and that all docks, wharves, or warehouses owned by it are maintained for the purpose of handling and holding goods, wares and merchandise belonging to defendant itself or the persons for whom it ships, and that defendant did not accept goods on storage for hire, nor did it permit boats other than its own to land at its wharves, warehouses, or docks, for the purpose of unloading goods for hire.

(6) The Court erred in finding against the contention of defendant set out in paragraph 9 of said Statement of Facts and Stipulation for Submission Without Action, to wit, that the defendant should not be compelled to pay a license fee of ten cents a ton on freight handled or stored by it.

(7) The Court erred in its judgment of 5 June, 1912, in ordering, adjudging and decreeing that the said report of the said Referee, including the findings of fact and conclusions of law, be in all respects approved and confirmed. [69]

(8) The Court erred in rendering judgment against the defendant and in approving the report

of said Referee, in this, that the evidence is contrary to the findings of said Referee and is insufficient to justify the said judgment, in the following particulars, to wit:

(a) That the uncontradicted evidence shows that the defendant did not maintain, conduct, prosecute, or attempt to prosecute the business of public docks, wharves, and warehouses, but, on the contrary, that the defendant maintained and conducted docks, warehouses, and wharves for its own private use.

(b) That the uncontradicted evidence shows that the defendant conducted, prosecuted, and maintained the business, among other things, of maintaining private warehouses, docks, and wharves for the use of itself and its shippers, and made no charge of any kind therefor, and that the said docks, wharves, and warehouses were constructed and maintained by it for its sole, exclusive and private use only.

(9) That the Court erred in adopting the Referee's report herein, in this, that the same is contrary to the evidence in the particulars set out in Assignment of Errors No. 8.

(10) The Court erred in adopting all those parts of Finding No. 3 of the Referee's report in which he finds that the defendant became liable to pay to the United States of America a license tax of ten cents a ton, amounting to the various amounts set forth in sections 1 to 7, inclusive, of said Finding.

(11) The Court erred in adopting Finding No. 4 of said Referee's report, to wit: "That said Northern Commercial Company is liable to pay to the

United States of America license tax on the total amount of freight handled upon its wharf at Fairbanks, Alaska, for the years 1905, 1906, 1907, 1908, 1909, 1910 and 1911, inclusive, belonging, consigned to, or consigned by persons or corporations other than the defendant herein, on 21,999.42 tons at the rate of ten cents per ton, amounting to the aggregate to two thousand one hundred ninety-nine dollars and ninety-four cents, (\$2,199.94).” [70]

(12) The Court erred in adopting the Referee’s report herein and in determining by its judgment of 5 June, 1912, that the plaintiff do have and recover from the defendant the sum of \$2,199.94, together with its costs and disbursements.

(13) The Court erred in determining by its judgment of 5 June, 1912, that there was due from the defendant Northern Commercial Company the sum of \$2,199.94, or any other sum, for license fees on the warehouses, wharves, and docks in question.

(14) The Court erred in giving final judgment against the defendant and in refusing to render judgment in favor of defendant.

(15) The Court erred in overruling and denying the defendant’s motion for a new trial, and thereby determining that the evidence was sufficient to justify the judgment and that said judgment was sustained in law.

(16) The Court erred in rendering its said judgment of 5 June, 1912, in favor of the plaintiff and against the defendant, for the reason that said judgment is contrary to the evidence; the evidence is insufficient to justify the same; and that said decision

and judgment are contrary to law.

(24) The Court erred in rendering judgment against defendant for its costs.

WHEREFORE: The defendant prays that the judgment in the above-entitled action may be reversed and that it may be allowed all things that it has lost thereby.

19 May, 1913.

McGOWAN & CLARK.

Attorneys for Defendant.

Due service of the foregoing assignment of errors is hereby admitted this nineteenth day of May, 1913, and it is stipulated that the same may be used on appeal and writ of error and both.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plaintiff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Assignment of Errors. Filed in the District Court, Territory of Alaska, 4th Div., May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [71]

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[Title of Court and Cause.]

**Order Allowing Writ of Error and Fixing Bond.**

On motion of Messrs. McGowan & Clark, attorneys for defendant, and the filing of a petition for a writ of error and assignment of error.

It is ordered that a writ of error be, and the same



is, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, the judgment heretofore made and entered herein on the fifth day of June, A. D. one thousand nine hundred twelve, and that the amount of the bond on said writ of error be, and the same is, hereby fixed at the sum of five thousand dollars, to cover supersedeas, costs, and damages of defendant in error.

Dated at Fairbanks, Alaska, on this 19th day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,  
District Judge.

Entered in Court Journal No. 12, page 590.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Order Allowing Writ of Error and Fixing Bond. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.

Due service hereof admitted this May 19, 1913,

JAMES J. CROSSLEY,

U. S. Attorney,  
Attorney for Plff. [72]

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[Title of Court and Cause.]

**Order Allowing Appeal and Fixing Amount of  
Appeal Bond.**

Now, on this 19th day of May, A. D. one thousand nine hundred thirteen, the same being one of the



judicial days of the December, A. D. one thousand nine hundred twelve, special term of the Court, holden at Fairbanks, in the Fourth Judicial Division of the Territory of Alaska, this cause came on to be heard on the defendant's petition for an appeal, and the Court being advised in the premises,

It is ordered that the defendant's appeal in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, be, and the same is, hereby allowed, and that a certified transcript of the record, and all proceedings, judgments whether interlocutory or final, decrees, orders, testimony, bill of exceptions, opinions of the Court, notice of appeal, assignment of error, and exhibits be transferred to the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California;

It is further ordered that the bond for the sum of five thousand dollars, this day filed in this cause, conditioned for the payment of all costs, judgments, and damages that may be rendered by the said United States Circuit Court of Appeals for the Ninth Circuit, whether the same be rendered under writ of error or on direct appeal, shall act and take effect as a supersedeas bond on direct appeal, and also as a bond for costs and damages on appeal, and that no other or further bond be required to be given by defendants. [73]

Done in open court at Fairbanks, Alaska, on this 19th day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,  
District Judge.

Entered in Court Journal No. 12, page 590.

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Order Allowing Appeal and Fixing Amount of Appeal Bond. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [74]

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[Title of Court and Cause.]

**Order Relative to Supersedeas Bond on Writ of Error.**

The defendant above named having, on this day, filed its petition for writ of error from the decision and judgment thereon made and entered herein to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, together with an assignment of errors, within due time, and also praying that an order be made fixing the amount of security which defendants shall give and furnish on said writ of error, and that, on the giving of said security, all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said Circuit Court of Appeals for the Ninth Circuit, and said petition having on this day been duly allowed:

Now, therefore, it is ordered that, on the defendant above named filing with the clerk of this Court a good and sufficient bond in the sum of five thousand dollars, to the effect that, if the said defendant and plaintiff in error shall prosecute the said writ of error to effect, and shall answer and pay all judgments, damages, and costs, if it shall fail to make good its said plea, then said obligation to be void, otherwise to remain in full force, effect, and virtue,—the said bond to be approved by the Court,—all further proceedings in this court shall be, and they are, hereby suspended and stayed until the determination of the said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California. [75]

Dated at Fairbanks, Alaska, on this 19th day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,  
District Judge.

Entered in Court Journal No. 12, page 590.

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,  
U. S. Attorney,  
Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Order Relative to Supersedeas Bond on Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [76]

[Title of Court and Cause.]

**Bond.**

KNOW ALL MEN BY THESE PRESENTS, that we, Northern Commercial Company, a corporation, appellant herein, as principal, and Volney Richmond and C. J. Hurley, as sureties, are held and firmly bound unto the United States of America, appellee herein, in the sum of five thousand dollars, to be paid to the said United States of America, appellee, for the payment whereof, well and truly to be made, we bind ourselves, and each of, and our and each of our heirs, executors, administrators, successors in interest, and assigns, firmly by these presents.

Sealed with our seals and dated this nineteenth day of May, A. D. one thousand nine hundred thirteen.

Whereas, lately, at a District Court for the Territory of Alaska, Fourth Judicial Division, holden at Fairbanks, Alaska, in a suit pending in said court between the United States of America as plaintiff and Northern Commercial Company as defendant, a judgment was rendered against the defendant Northern Commercial Company for the sum of two thousand one hundred ninety-nine dollars ninety-four cents, and the said defendant having obtained a writ of error and having been allowed an appeal, and having filed copies thereof in the clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and citations on writ of error and on appeal having been directed to the said United States of America, citing and admonishing it to be and appear at a session of the United States Circuit Court

of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said Circuit, on the [77] — day of —, A. D. one thousand nine hundred — next;

And whereas the above-named appellant has appealed by writ of error and appeal,—being uncertain as to whether the above-entitled action is an action in equity or an action at law,—to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the orders, judgments, and decrees of the above-entitled court in this cause;

And whereas it has been stipulated by counsel for both parties to this action that both sides are in doubt as to whether such appeal should be prosecuted by an appeal direct or by writ of error, and that these presents shall be considered as a supersedeas bond either on writ of error or appeal, when the said Circuit Court of Appeals for the Ninth Circuit shall have determined the nature of said action, as more fully appears from the stipulation contained in the bill of exceptions settled in this action.

Now, therefore, the conditions of this obligation are such that, if the above-named Northern Commercial Company shall prosecute said writ of error or appeal, or either or both, to effect, and shall answer and pay all damages and costs if it shall fail to make good its plea, either on appeal or on writ of error, then this obligation shall be void; otherwise to remain in full force, effect and virtue;

And whereas appellants in error or on appeal desire a stay of execution in the above-entitled action, pending the determination of said appeal or writ of error;



Now therefore, the further condition of this obligation is such that, if the said Northern Commercial Company, appellant, shall prosecute either said writ of error or said appeal to effect, and shall answer and pay all damages, costs, and judgments, if it fails to make good its said plea, then the foregoing obligation to be void; otherwise to remain in full [78] force, effect and virtue.

NORTHERN COMMERCIAL COMPANY.

By VOLNEY RICHMOND,

Superintendent and Attorney in Fact.

VOLNEY RICHMOND,

C. J. HURLEY.

Territory of Alaska,  
Fourth Division,—ss.

Volney Richmond and C. J. Hurley, being first duly sworn, each for himself and not one for the other doth depose and say that he is a resident of Fairbanks Precinct, Territory of Alaska, and is worth the sum of five thousand dollars, to wit, the sum specified as the penalty in the foregoing bond, over and above all his just debts and liabilities, in property not exempt from execution and situate within the Territory of Alaska.

VOLNEY RICHMOND.

C. J. HURLEY.

Subscribed and sworn to before me on this nineteenth day of May, A. D. one thousand nine hundred thirteen.

[Seal]

JOHN A. CLARK,

Notary Public in and for the District of Alaska.



It is stipulated that the foregoing bond may be accepted and approved as a supersedeas and cost bond, either on appeal or on writ of error, in the above-entitled action; that the same is sufficient in form; and that the sureties thereon may be approved by the Court.

Dated at Fairbanks, Alaska, this nineteenth day of May, A. D. one thousand nine hundred thirteen.

JAMES J. CROSSLEY,  
United States District Attorney for the Territory of  
Alaska, Fourth Judicial Division,

Attorney for Plaintiff.

McGOWAN & CLARK,  
Attorneys for Defendant. [79]

Pursuant to the foregoing stipulation, the foregoing bond and the sureties thereon are hereby approved and accepted.

Dated at Fairbanks, Alaska, this nineteenth day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,  
District Judge.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Company, Defendant. Bond on Appeal and Supersedeas. Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,  
U. S. Attorney,  
Attorney for Plff. [80]

[Title of Court and Cause.]

**Designation of Place for Hearing of Writ of Error  
and Appeal.**

To the Honorable FREDERIC E. FULLER, Judge  
of the Above-named Court, and to the Plaintiff  
and Its Attorney:-

Now comes the defendant, plaintiff in error, in the  
above-entitled action, and, pursuant to the provisions  
of an act of Congress, giving the designation of the  
place of hearing appeals for the Ninth Circuit to  
the plaintiff in error or the appellant, does hereby  
designate the City and County of San Francisco, in  
the State of California, as the place for the hearing  
of the writ of error and appeal in the above-entitled  
action.

McGOWAN & CLARK,  
Attorneys for Defendants.

Due service hereof admitted this May 24, 1913.

JAMES J. CROSSLEY,  
United States District Attorney for the Territory of  
Alaska, 4th Div.,

Attorney for Plff.  
By J. K. BROWN,  
Assistant.

[Endorsed]: No. 657. In the United States Dis-  
trict Court, Territory of Alaska, Fourth Division.  
United States of America, Plaintiff, vs. Northern  
Commercial Co., Defendant. Designation of Place  
for Hearing of Writ of Error and Appeal. Filed in  
the District Court, Territory of Alaska, 4th Div.  
May 24, 1913. C. C. Page, Clerk. By P. R. Wagner,  
Deputy. [81]

[Title of Court and Cause.]

**Writ of Error.**

United States of America,  
Territory of Alaska,—ss.

The President of the United States of America to the  
Honorable FREDERIC E. FULLER, Judge of  
the District Court for the Territory of Alaska,  
Fourth Division, Greeting:

Because, in the records and proceedings, as also in the rendition of a judgment dated the fifth day of June, A. D. one thousand nine hundred twelve, of a plea which is in the said District Court for the Territory of Alaska, Fourth Division, before you, between the United States of America as plaintiff and Northern Commercial Company as defendant, a manifest error hath happened, to the great prejudice and damage of the said Northern Commercial Company, as is said and appears by the petition herein;

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if said judgment be therein given, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, together with this writ, so as to have the same at the said place in the said Circuit on the sixteenth day of June, A. D. one thousand nine hundred thirteen, that, the records and proceedings aforesaid being in-

spected, the said United States Circuit Court of Appeals [82] for the Ninth Circuit may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 19th day of May, A. D. one thousand nine hundred thirteen.

Attest my hand and the seal of the District Court for the Territory of Alaska, Fourth Division, at the clerk's office at Fairbanks, Alaska, on this 19th day of May, A. D. one thousand nine hundred thirteen.

[Seal]

C. C. PAGE,

Clerk of the District Court for the Territory of Alaska, Fourth Division.

Allowed this 19th day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,

Judge of the District Court for the Territory of Alaska, Fourth Division. [83]

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Writ of Error. [84]

[Title of Court and Cause.]

**Citation on Writ of Error.**

United States of America,

Territory of Alaska,—ss.

The President of the United States of America to  
the United States of America and to James J.  
Crossley, United States District Attorney for  
the Territory of Alaska, Fourth Division, Its  
Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to the writ of error filed in the office of the clerk of the District Court for the Territory of Alaska, Fourth Division, wherein the United States of America is defendant in error and Northern Commercial Company is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should be corrected and speedy justice should not be done to the parties in error in that behalf.

Witness the Honorable EDWARD D. WHITE,  
Chief Justice of the Supreme Court of the United States of America, on this 19th day of May, A. D. one thousand nine hundred thirteen, and in the year of our Independence the one hundred thirty sixth.

F. E. FULLER,

District Judge Presiding in and for the Fourth Judicial Division of the Territory of Alaska. [85]

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney.

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Citation on Writ of Error. [86]

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[Title of Court and Cause.]

**Citation on Appeal.**

The President of the United States of America to the Above-named Plaintiff and to James J. Crossley, United States District Attorney for the Territory of Alaska, Fourth Division, Its Attorney, Greeting:

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an order allowing appeal made and entered in the above-entitled cause, in which the United States of America is plaintiff and appellee, and Northern Commercial Company is defendant and appellant, to show cause, if any there be, why the judgment and decree made and entered in said action on the fifth day of June, A. D. one thousand nine hundred twelve, as in said order allowing appeal mentioned, should not be set aside and reversed and why speedy justice should not be done to said defendant in that behalf.



WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, on this 19th day of May, A. D. one thousand nine hundred thirteen, and in the year of our Independence the one hundred thirty-sixth.

Attest my hand and the seal of the above-named District Court, at Fairbanks, Alaska, on this 19th day of May, A. D. one thousand nine hundred thirteen,

F. E. FULLER,

District Judge. [87]

Due service hereof admitted this May 19, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Citation on Appeal. [88]

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[Title of Court and Cause.]

**Order Extending Time Within Which to Perfect Appeal.**

On this day the above-entitled cause came on to be heard before the Judge in the above-named court, on the application of the defendant herein for an order extending the return days for writ of error and appeal herein, and the parties appearing by their respective attorneys, and it appearing to the Court that it is necessary, owing to the great distance from Fairbanks, Alaska, to San Francisco, California,

and the slow and uncertain communication between said places, that an order extending the time within which to docket said cause and to file the record therein with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, until and including the first day of August, A. D. one thousand nine hundred thirteen, should be made, the Court, being fully advised in the premises and deeming that good cause exists therefor;

It is hereby ordered that the time within which said appellant shall perfect said cause on appeal and upon writ of error and both, and docket and file the record thereof in said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and the same is, hereby enlarged and extended to and including the first day of August, A. D. one thousand nine hundred thirteen;

It is further ordered that but one record need be transmitted to the said Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and that said record shall be [89] used on the hearing of said appeal and on writ of error and both.

Dated at Fairbanks, Alaska, on this 24th day of May, A. D. one thousand nine hundred thirteen.

F. E. FULLER,  
District Judge.

O. K.—J. J. C., U. S. Atty.

Entered in Court Journal No. 12, page 601. [90]

Due service hereof admitted this May 24, 1913.

JAMES J. CROSSLEY,

U. S. Attorney,

Attorney for Plff.

By JOHN K. BROWN,

Assistant.

[Endorsed]: No. 657. In the United States District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. Northern Commercial Co., Defendant. Order Extending Time Within Which to Perfect Appeal. Filed in the District Court, Territory of Alaska, 4th Div. May 24, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy. [91]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]**

[Title of Court and Cause.]

United States of America,

Territory of Alaska,

Fourth Division,—ss.

I, C. C. Page, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify, that the above and foregoing, and hereto annexed, ninety-one typewritten pages, numbered from 1 to 91, inclusive, constitute a full, true and correct copy, and the whole thereof, including the indorsements, of the record in cause No. 657, entitled: United States of America, Plaintiff, vs. Northern Commercial Company, a Corporation, Defendant, wherein

the United States of America is Defendant in Error and Appellee, and the Northern Commercial Company is Plaintiff in Error and Appellant, made in accordance with the praecipe of the Plaintiff in Error and Appellant, and filed herein and made a part hereof; and that the same is by virtue of the writ of error, order of appeal, and citations issued in said cause and is a return thereof in accordance therewith.

And I further certify that this transcript was prepared by me, in my office, and that the costs of preparing same, and certificate, amounting to thirty-five dollars and forty-five cents (\$35.45) was paid to me by counsel for plaintiff in error and appellants.  
[92]

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court, at Fairbanks, Alaska, this fourteenth day of June, 1913.

[Seal]

C. C. PAGE,

Clerk District Court, Territory of Alaska, Fourth Division.

By H. C. Green,

Deputy. [93]

[Endorsed]: No. 2294. United States Circuit Court of Appeals for the Ninth Circuit. Northern Commercial Company, Plaintiff in Error and Appellant, vs. United States of America, Defendant in Error and Appellee. Transcript of Record. Upon Writ of Error to and upon Appeal from the United States District Court of the Territory of Alaska, Fourth Division.

Received July 28, 1913.

F. D. MONCKTON,  
Clerk.

Filed July 28, 1913.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.





No. 2294

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IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

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NORTHERN COMMERCIAL COMPANY,  
*Plaintiff in Error and Appellant,*

VS.

UNITED STATES OF AMERICA,  
*Defendant in Error and Appellee.*

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## BRIEF OF PLAINTIFF IN ERROR AND APPELLANT.

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### STATEMENT OF THE CASE.

This case is before the court upon writ of error to and upon appeal from the United States District Court of the territory of Alaska, fourth division. The case was submitted to the court below upon an agreed statement of facts and a stipulation to submit the controversy without action under and pursuant to the provisions of Chapter 28 of the Civil Code of Procedure of the District of Alaska. From the agreed statement of facts appearing on pages 4 to 9, inclusive, of the transcript, it appears that the appellant is a corporation under the laws of the State of New Jersey carrying on a general mer-

chandise and transportation business in the territory of Alaska.

By Section 460 of the Code of Criminal Procedure of the District of Alaska it is provided that

“any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for permission so to do from the District Court or subdivision thereof in said district and pay for said license for the respective lines of business and transportation as follows, to wit: \* \* \* public docks, wharves and warehouses, ten cents per ton on freight handled or stored.”

It is stipulated that during the last three years defendant has been carrying on a merchandise and transportation business in the territory of Alaska and has handled a large amount of freight for itself and its shippers.

It is stipulated that a portion of such freight has been landed at the town of Chena for transportation from that point by rail to the town of Fairbanks. The appellant contends that it has not been conducting a public dock, wharf or warehouse at Chena or at Fairbanks but that it maintains at Chena a building within which at certain times appellant stores general merchandise belonging to it and to its shippers and that it maintains at Fairbanks warehouses within which it stores merchandise belonging to it and which appellant transports by its steamers from points outside of Alaska to Fairbanks.

It is stipulated that appellant has a wharf or warehouse on the river bank in front of its premises at Fairbanks at which some boats owned by appellant land and unload the freight belonging to appellant and other shippers but that no wharfage charge, dock charge or storage charge is made for freight so landed upon such wharf. That appellant is not engaged in prosecuting or attempting to prosecute the business of public docks, wharves or warehouses within the territory of Alaska and that all such docks, wharves or warehouses are private and used solely for the purpose of handling and holding merchandise belonging to appellant itself or the person for whom it ships; that appellant does not accept goods on storage for hire nor does it permit boats other than its own to land at its warehouse or docks for the purpose of unloading goods for hire.

The government contends that the wharves, warehouses and docks are public and that appellant is liable to pay a tax or license fee of ten cents per ton on freight handled or stored.

The original statement of facts was supplemented by stipulation (page 37 trans.) to show that since the filing of the original statement of facts and during the years 1907, 1908, 1909, 1910, 1911, appellant has been conducting a wharf at Fairbanks in the same manner as set forth in the original statement of facts and that the court shall determine whether or not the appellant is liable to pay a license tax on

the amount of freight handled upon its wharf at Fairbanks belonging or consigned to or consigned by corporations other than the appellant herein during said years and the amount thereof, in short, that the court shall have jurisdiction in said cases to determine the controversy between the parties from the year 1905 down to and including the year 1911.

Upon the foregoing statement of facts the matter was referred by the court to a referee to take proofs as to the amount of freight consigned to others than the appellant, handled at its wharf at Fairbanks, Alaska, and the referee found that the sum of \$2199.94 was due by appellant to the United States on the total amount of freight handled by appellant upon its wharf at Fairbanks, Alaska, during the years 1905-1911, inclusive, said amount of freight so handled having been found by the referee to be 21994.42 tons (trans. pages 53-55) and thereupon the court entered judgment thereon (trans. page 121).

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#### ASSIGNMENT OF ERRORS RELIED UPON.

As the only question in this case is whether or not the wharf maintained by appellant at Fairbanks, Alaska, was a public or private wharf and as all the assignments of errors involve this question and the liability of appellant to pay a license tax of ten cents per ton on freight handled or stored on such wharf appellant will treat them collectively and argue as-

signments (1) and (8) as typical of all the assignments contained on pp. 72 to 77 of the transcript.

*“Assignment of Error No. (1).* The court erred in deciding (order of Judges Cushman and Overfield of date 24 August, 1911), ‘That the defendant, the Northern Commercial Company, a corporation, is liable to pay the United States a license tax of ten cents a ton per annum for the years 1905 to 1911, both inclusive, on the amounts of freight handled upon its wharf at Fairbanks, Alaska, belonging to, consigned to, or consigned by persons or corporations other than the defendant herein.’ ”

*“Assignment of Error No. 5.* The court erred in finding against the contention of the defendant set out in paragraphs 4, 5, 6, 7, and 8 of said Statement of Facts and Stipulation for Submission Without Action, to wit, the defendant contended that it did not maintain or conduct a public dock, wharf, or warehouse at Chena or Fairbanks, but that it did maintain at Fairbanks warehouses, within which it stored merchandise belonging to it and which it transported by its steamers from points outside of Alaska to the town of Fairbanks, and that it had a wharf and warehouses on the river bank in front of its premises in Fairbanks, at which steamers owned by it landed and unloaded the freight belonging to it and its shippers, but that no wharfage charge, dockage charge, or storage charge was made for freight so landed upon said wharf; that said defendant was not engaged in the business of prosecuting or attempting to prosecute public docks, wharves, or warehouses within the Territory of Alaska, and that all docks, wharves, or warehouses owned by it are maintained for the purpose of handling and holding goods, wares and merchandise belonging to defendant itself or the persons for whom it ships, and that defend-

ant did not accept goods on storage for hire, nor did it permit boats other than its own to land at its wharves, warehouses, or docks, for the purpose of unloading goods for hire."

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#### ARGUMENT.

The evidence showed that Northern Commercial Company, appellant herein, is a corporation incorporated in New Jersey and carrying on a general merchandise business in Alaska. Until 1907 the Northern Commercial Company maintained and owned a fleet of vessels for the purpose of transporting its merchandise and general freight. In 1907 the Northern Navigation Company was incorporated by the same stockholders as in the Northern Commercial Company for the purpose of taking over the transportation business of the latter. These two companies are for the purposes of this case one and the same (trans. pp. 21-24).

The Northern Commercial Company, appellant, built a wharf at Fairbanks, Alaska, on the land in front of their town property on the water front (trans. p. 26). The appellant acquired the water front by deed from the government. The town of Fairbanks was originally a trading site and afterward incorporated. The appellant was in possession of the water front at the time the town was incorporated (1903) and has a deed from the town-site trustee under patent received by him (trans. pp. 28, 29, 30, 31, 32, 33). Appellant owns a wharf



at Fairbanks, constructed at its own expense for the purpose of handling freight, transferring freight from the steamers to the consignees and to its own stores. There is a warehouse on the wharf used for the storage of appellant's own supplies. The cost of upkeep of the Fairbanks wharf is defrayed out of appellant's general funds. Many shippers ship their goods over appellant's line of steamboats operating on the Yukon and Tanana Rivers in Alaska and such goods pass through appellant's wharf at Fairbanks. The wharf is also used to maintain an office where passengers on the steamboats coming or going from Fairbanks on the Tanana River and Yukon River may purchase their tickets and check their baggage. Shippers over appellant's line pay freight charges contained in a published tariff rate and these charges are the only charges which are made by appellant. The cost of maintaining the wharf and long shoring cost is included in the general cost of operating the company.

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## I.

The statute of Alaska with which we are concerned in this proceeding is Section 2569, *Compiled Laws of the territory of Alaska*.

“That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district

court or a sub-division thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:

\* \* \*

“Freight and transportation lines, propelled by mechanical power registered in Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the district of Alaska, one dollar per ton per annum on net tonnage, customhouse measurements, of each vessel.”

“Mercantile establishments: doing a business of one hundred thousand dollars per annum, five hundred dollars, per annum,” etc.

“Ships and shipping: Ocean and coastwise vessels doing local business for hire, plying in Alaskan waters, registered in Alaska, or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, customhouse measurement of each vessel.”

“Public docks, wharves and warehouses, ten cents per ton on freight handled or stored.”

In the foregoing extract only those lines of business which might include the business transacted by appellant are quoted. It is in evidence that appellant transacts a general merchandise business and pays therefor five hundred dollars per annum as required by the foregoing statute of mercantile establishments doing a business of one hundred thousand dollars per annum (trans. pp. 17-18).

A license is also required by said statute of freight and passenger transportation lines and ocean and coastwise vessels.

The agreed statement of facts and the evidence show clearly that appellant and Northern Navigation Company used the Fairbanks wharf as incidental to and for the convenience of their mercantile and transportation business. The maintenance of the wharf in itself was not a "a line of business" within the meaning and intent of the statute.

"Nothing is better settled than that statutes should receive a sensible construction such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion. The intention of Congress as expressed in the act of June 6th, 1900 (*the act under consideration here*) was to levy a license tax upon the prosecution of the business of handling freight in connection with a public dock, wharf or warehouse and to the extent of the use of such structure for that purpose" (our italics).

*John J. Sesnon Co. v. U. S.*, 182 Fed. 573.

No wharfage was charged and no vessels used the wharf except those of appellant.

The case of *Spreckels Sugar Refining Co. v. McClain*, 192 U. S. 397, 48 L. Ed. 496, goes further than is necessary to sustain our position in this matter. There a tax was laid on the gross annual receipts of a company carrying on or doing the business of refining sugar. The wharves owned by the appellant in that case were in use by the public and a wharfage fee was charged. The Supreme Court nevertheless held that under the circumstances of the case the wharfage receipts were part

of the general receipts of appellant's business and were subject to the tax.

The following quotation from the Spreckels case will throw further light upon our contention:

"It was in proof that the plaintiff owned three wharves on the Delaware River, at which vessels landed and for the use of which these vessels paid wharfage according to the rates prescribed by a general tariff. A large part, nearly all, of the sugar refined by the plaintiff was brought into the port of Philadelphia by vessels which come to those wharves and such vessels paid wharfage according to that tariff. Many vessels brought raw sugar which the refining company had purchased abroad. The wharves were built by the plaintiff for the purpose of transacting any business that it might have or for which it saw fit to use them. And nearly all the business done at that time at the wharves was the unloading of sugar consigned to the plaintiff. The exceptions were too few to be regarded as material. Upon its receipts from such wharfage the plaintiff had been compelled to pay a tax. Was it required to pay a tax upon receipts of profits from that source?" \* \* \*

"On this question the Circuit Court said: 'Scarcely any vessels lie at these wharves except the vessels that bring raw sugar to the plaintiff, and the wharves are used for the convenience and greater profit of the corporate enterprise. The money paid by the vessels for wharfage, is, I think a receipt of the business.' \* \* \*

"This question is not wholly free from difficulty. But we think the better reason is with the ruling in the Circuit Court and in the Circuit Court of Appeals, to the effect that *the wharves in every substantial sense constituted*

*a part of the plaintiff's 'plant', and, if not absolutely necessary, were of great value, in the prosecution of its business; and that receipts derived by plaintiff from the use of the wharves by vessels, particularly because, with rare exceptions, the vessels using them brought to the plaintiff the raw sugar which it refined, were receipts in its business of refining sugar. The primary use of the wharves was in connection with, and in the prosecution of that business. \* \* \** The wharves were part of the instrumentalities and conveniences employed by plaintiff for the successful management and conduct of its business of refining sugar."

The license imposed by the act hereinabove referred to, being levied on "lines of business", it appears that the government is placed in a curious position by virtue of its agreement to the stipulated statement of facts as the same appears on pp. 4 to 9 of the transcript. Paragraph VII thereof reads:

"That said defendant is not engaged in the business of prosecuting or attempting to prosecute public docks, wharves or warehouses within the District of Alaska, and all docks, wharves or warehouses owned by it are maintained for the purpose of handling and holding goods, wares and merchandise belonging to the defendant itself, or the persons for whom it ships."

Certainly if the appellant is not engaged in the business of prosecuting public docks wharves or warehouses, the judgment of the court that appellant is liable to pay a tax on freight handled or

stored at the Fairbanks wharf is at variance with and contrary to the stipulation of the parties to the action.

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## II.

If the wharf maintained by appellant at Fairbanks was a private and not a public wharf, the judgment of the court upon the report of the referee finding appellant liable for the sum of \$2199.94, for license taxes on the total amount of freight handled upon its public wharf at Fairbanks, Alaska, during the years 1905, 1906, 1907, 1908, 1909, 1910 and 1911 inclusive belonging, consigned to or consigned by persons or corporations other than appellant was erroneous.

The question before us in this case has been adjudicated in this court in the case of *John Sesnon & Co. v. United States*, 182 Fed. 573. The same provision of the Alaskan statute was under consideration there. It appeared from the evidence in that case that the defendant would make a contract and did make contracts with anyone for the use of the wharf in handling freight between ship and shore. There was no evidence in the case that the defendants refused to serve all vessels alike under the same conditions; on the contrary the evidence showed that the defendant is serving all vessels and corporations alike and that it is ready to make contracts with others for like



service. The following instruction was given to the jury and approved by this court in the opinion:

“The question whether the wharf conducted by the defendant was a public or private one depends on how the company has conducted it on the day stated in the information. Were they receiving freight as a lighterage company and as wharfinger indiscriminately from all persons who applied for that accommodation and charging tolls therefor, why then it may be public; if they were discriminating or refusing freight from some and accepting it from others then, of course, it would not be a public wharf. The business of conducting a wharf is a business incident and part of the lighterage business and you will remember that they have as a lighterage company received freight without any discrimination as to persons or as to consignees from all persons, all comers, all those who applied for the benefit of their lighter plant and their lighter services, why then it was a public wharf. *If they only landed freight for their own purposes, for their own uses, why then of course it would be a private wharf and would not be subject to a license.*”

The evidence in the case at bar showed, without contradiction that the wharf was only used by the vessels of appellant. That no wharfage fee was charged, no lighterage, no wharfinger fees. Appellant in this case entered into no contract with anyone for the use of the wharf in handling freight between ship and shore as was the case in the Sesnon decision. In the Sesnon case the defendant was a corporation organized under the laws of the State of California, doing business in

Alaska and engaged principally in the business of lighterage at Nome Roadstead.

In the light of the following expressions of opinion as to what constitutes a public wharf we are confident that the structure in the case at bar must be held to be a private wharf used as incident to and for the greater convenience of the mercantile and transportation business of appellant.

*Dutton v. Strong*, 1 Black (U. S.) 35; 17 L. Ed. 29.

“Piers or landing places and even wharves may be private, or they may be in their nature public, although the property may be in an individual owner, or in other words the owner may have the right to the exclusive enjoyment of the structure, and to exclude all other persons from its use; or he may be under obligation to concede to others the privilege of landing their goods, or of mooring their vessels there upon the payment of a reasonable compensation as wharfage; and whether they are the one or the other may depend in case of dispute upon several considerations, involving the purpose for which they were built, the uses to which they have been applied, the place where located and the nature and character of the structure. Undoubtedly a riparian proprietor may construct anyone of these improvements for his own exclusive use and benefit,” etc.

*Transportation Co. v. Parkersburg*, 107 U. S. 691; 27 Law. Ed. 584.

“It is undoubtedly a general rule of law, in reference to all public wharves, that wharfage

must be reasonable. A private wharf, that is, a wharf which the owner has constructed and reserves for his private use, is not subject to this rule; for if any person wishes to make use of it for a temporary purpose, the parties are at liberty to make their own bargain. That such wharves may be had and owned even on a navigable river, is not open to controversy. It was so decided by this court in *Dutton v. Strong*, 1 Black (U. S.) 23 (66 U. S. XVII, 29), and in *Yates v. Milwaukee*, 10 Wall 497 (77 U. S. XIX, 984), whether a private wharf may be maintained as such, where it is the only facility of the kind in a particular port or harbor may be questioned."

This question has been resolved in favor of the owner of a private wharf in *Louisville R. Co. v. West Coast Naval Stores Co.*, 198 U. S. 483; 49 L. Ed. 1135.

*Potomac Steamboat Co. v. Upper Potomac Steamboat Co.*, 109 U. S. 672; 27 Law. Ed. 1070.

"A riparian proprietor in the language of Mr. Chief Justice Miller in *Yates v. Milwaukee*, 10 Wall 497-504 (77 U. S. XIX, 984, 986), is one whose land is bounded by a navigable stream, and among the rights he is entitled to as such, are "access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier for his own use, or for the use of the public, subject to such rules or regulations as the legislature may see proper to impose for the protection of the rights of the public, whatsoever those may be."

*Weems Steamboat Company v. People's Steamboat Co.*, 214 U. S. 345; 16 Ann. Cas. 1222.

In this case it appeared that complainant is a corporation which has been engaged in the business of transportation of passengers and freight between Baltimore and various landings on the Rappahanock River, and for many years has been the owner or lessee of the wharves on that river mentioned in the bill of complaint. The defendant made use of the wharves of complainant against its will. There was no evidence of dedication of the wharves to the public nor of any condemnation thereof by any public authority.

The court said:

“The rights of a riparian owner upon a navigable stream in this country are governed by the law of the State in which the stream is situated. These rights are subject to the paramount public right of navigation. The riparian proprietors have the right among others, to build private wharves out so as to reach the navigable waters of the stream. *Dutton v. Strong*, 1 Black 23, 17 U. S. (L. Ed.) 29; *Yates v. Milwaukee*, 10 Wall 479, 19 U. S. (L. Ed.) 984; *Parkersburg, etc., Transportation Co. v. Parkersburg*, 107 U. S. 691, 699, 2 S. Ct. 732, 27 U. S. (L. Ed.) 584; *Illinois Central R. Co. v. Illinois*, 146 U. S. 387, 445, 13 S. Ct. 110, 36 U. S. (L. Ed.) 1018; *St. Anthony Falls Water Power Co. v. St. Paul Water Com'rs*, 168 U. S. 349, 368, 18 S. Ct. 157, 42 U. S. (L. Ed.) 497. The courts of the State of Virginia affirm the same rights of the riparian proprietor. *Norfolk v. Cooke*, 27 Gratt. 430, 435; *Alexandria etc. R. Co. v. Faunce*, 31 Gratt. 761, 765. If the wharf obstructs navigation or the private rights of others, or if it encroach upon any public landing, the

wharf may be abated. *Code of Virginia* (1887), Sec. 998. A private wharf on a navigable stream is thus held to be the property which cannot be destroyed or its value impaired, and it is property, the exclusive use of which the owner can only be deprived in accordance with established law, and if necessary that it or any part of it be taken for the public use due compensation must be made. The owner of a private wharf on a navigable stream does not, on that account only, hold it by a different title from the owner of any other property which he may use himself or permit others whom he may select to use, while at the same time denying its use by anyone else."

*Compton v. Hankins*, 90 Ala. 411; 24 Am. St. 823.

"The plaintiff, however, bases his right to recover on the alleged ground that the landing is public. Wharves or landings may be either private or public in their nature. If public the owner is under obligations to concede to others the privilege of landing their goods; if private, he has the right to the exclusive use and enjoyment or to permit such individuals to enjoy it as he sees proper. Whether a wharf or landing is public or private depends upon the ownership of the soil, the purposes for which it was built, the authority by which it was erected, the uses to which it has been applied and the nature and character of the structure. If the land on which it is constructed is vested in the public, or if built by public authority on land condemned, or if it be at the terminus of a public highway, and practically forms a part thereof, or has been dedicated by the owner to the use of the public, it may be regarded as a public wharf or landing.



The right to erect a landing on a navigable stream, having its foundation in the ownership of the land, when erected by an individual at his own expense, it is private property: Wharf case 3 *Bland* 361. It is well settled that the public may acquire an easement, a right to the use of such landing, by dedication on the part of the owner of the soil. But use by individuals, with the permission of the owner does not give the public the right to do the same without his consent. Use by the public, with his permission and for his own emolument, for no number of years will amount to dedication." \* \* \* "The objects for which a private landing may be held and used may be public, without affecting its private character. In such case there is an implied license to vessels navigating the stream to use it for receiving and discharging freight and passengers and also to all persons to occupy it for lawful and accustomed purposes; but the owner may at any time revoke the license as to the entire public, or withhold permission from particular vessels or persons."

From the foregoing decisions, the following principles may be said to be established:

A riparian proprietor may construct a wharf for his own exclusive use and benefit.

A private wharf may be had, owned and maintained on a navigable stream.

The considerations which determine whether or not a wharf is public or private are the following:

First. The purposes for which it was built.

Second. The uses to which it has been applied.



Third. The authority by which it has been erected.

Fourth. The ownership of the soil.

Fifth. The place where located.

Sixth. The nature and character of the structure.

Seventh. Dedication to the public.

Applying these considerations to the case at bar with particular reference to the testimony and agreed facts in this case, we feel that we can demonstrate that appellant's wharf is not public according to the judicial definitions of a public wharf.

*First.* The purpose for which it was built.

*Agreed statement of facts paragraph VII.*

“That said defendant is not engaged in the business of prosecuting or attempting to prosecute public docks, wharves, or warehouses within the Territory of Alaska, and all docks, wharves or warehouses owned by it are maintained for the purpose of handling and holding goods, wares and merchandise belonging to the defendant itself, or the persons for whom it ships.”

*Second.* The uses to which it has been applied.

*Agreed statement of facts paragraphs VI and VIII.*

“That said defendant has a wharf and warehouse on the river bank in front of its said premises in Fairbanks aforesaid, at which steamboats owned by it, land and unload the freight belonging to the said defendant and its shippers; but that no wharfage charge, dockage

charge or storage charge is made for freight so handled upon said wharf."

"That defendant does not accept goods on storage for hire, nor does it permit boats other than its own to land at its warehouses or docks for the purpose of unloading goods for hire."

*Third.* The authority by which it has been erected, and

*Fourth.* The ownership of the soil.

*Testimony of A. R. Heilig, pp. 30-32 transcript.*

"Q. Explain in your own way the manner in which the town was incorporated and whether or not the townsite took in the ground involved in this present controversy?

A. The town was incorporated according to the provisions of our statute. It embraced, to my certain knowledge, because I have been around the boundaries, the tract of land now occupied by the N. C. stores, warehouses and wharves. Subsequently I secured another employment from the city council; after they were incorporated I was appointed townsite agent and procured for them a survey of the out boundaries of the town of Fairbanks for the purpose of purchasing it from the government and procuring a patent. I then again familiarized with the tract of land which we sought to purchase and procured a survey of the out boundaries to be made by a surveyor appointed by the surveyor-general of Alaska. That again included all of the land covered by the stores and warehouses and wharves of the Commercial Company. I then procured the appointment of a townsite trustee, Henry T. Ray, and attended to the proceedings, making entry and application for the purchase of the

land for townsite purposes, all of which was done and the patent was issued to Mr. Ray from the government, covering all the land embraced within the official boundaries surveyed for patent. That patent also embraced the land of the Northern Commercial Company and its warehouses and the wharves. In that connection, as attorney for the townsite trustee, it became important as I thought for me to ascertain whether the so-called Barnette Trading Post had ever been perfected, because there were rights which might conflict with the townsite trustee's application to enter, which should be investigated. I satisfied myself that all pretense of claiming under the trading site had been abandoned; in other words, it had never been perfected and was practically forgotten. And I satisfied myself too from the agents of the Northern Commercial Company here that they chose to take their title from the townsite trustee under the patent received by him, and that is about as far as I personally know."

*Fifth.* The place where located, and

*Sixth.* The nature and character of the structure.

*Agreed statement of facts paragraph VI.*

"That said defendant has a wharf and warehouse on the river bank in front of its said premises in Fairbanks aforesaid, at which steamboats owned by it, land and unload the freight belonging to the said defendant and its shippers; but that no wharfage charge, dockage charge or storage charge is made for freight so landed upon said wharf."

*Seventh.* Dedication to the public.

*Agreed statement of facts paragraph VIII.*

“That defendant does not accept goods on storage for hire, nor does it permit boats other than its own to land at its warehouses or docks for the purpose of unloading goods for hire.”

We respectfully submit that upon the foregoing argument and authorities the decision of the District Court was erroneous and should be reversed.

Respectfully submitted,

LLOYD S. ACKERMAN,

*Attorney for Appellant.*

No. 2294.

IN THE  
**UNITED STATES CIRCUIT COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

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NORTHERN COMMERCIAL COM-  
PANY (a Corporation),

*Plaintiff in Error and Appellant,*

VS.

UNITED STATES OF AMERICA,

*Defendant in Error and Appellee.*

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**Upon Writ of Error to, and Appeal from, United States  
District Court for the District of Alaska, Fourth Judi-  
cial Division.**

**BRIEF OF DEFENDANT IN ERROR AND  
APPELLEE.**

**PARTS OF APPELLANT'S STATEMENT OF CASE CONTRO-  
VERTED.**

The statement of the case made by counsel for appellant is hereby controverted in the following particulars:

*First:* He states on page 1 of his brief, that the case was submitted to the Court below upon an agreed statement of facts and a stipulation to submit the controversy without action, when in fact it was submitted to the Court below upon the agreed statement

of facts and stipulation and evidence taken at the trial.

Pp. 17 to 35 inclusive, and 47 to 52 inclusive,  
Transcript of Record.

*Second:* He states on page 3 of his brief that it was stipulated that the docks, wharves and warehouses of appellant are private, when in fact there was no stipulation that such docks, wharves or warehouses were private, and the entire stipulation should be read and interpreted as a whole, to get the true sense thereof, and such reading and interpretation shows clearly that the government contends that such docks, wharves and warehouses are public.

*Third:* That the words "persons or" should be inserted between the words "by" and "corporations" in the third line of page 4 of appellant's brief.

*Fourth:* That no reference is made by counsel to paragraph IX of the stipulation which is particularly material in the case, and reads as follows:

"That a controversy has arisen between the parties hereto as to the construction of that portion of section 460 hereinbefore set out, the defendant contending that it should not be compelled to pay a license and fee of ten cents per ton on freight handled or stored by it, and the District Attorney representing the United States of America, in the Third Judicial Division of the District of Alaska, does not concede the correctness of the contentions made by defendant, and hereby consents that the controversy aforesaid be submitted to the court for construction, therefore it is consented by the parties hereto that the construction of said section may be submitted to the court for determination."



Pp. 6, 7, Transcript of Record.

*Fifth:* On page 4 of appellant's brief, it is stated that "upon the foregoing statement of facts the matter was referred by the Court to a referee to take "proofs," etc., when in fact it was upon the agreed statement of facts and the stipulation together with the evidence submitted at the trial of the case, after a jury had been waived, that the lower Court, Judges Cushman and Overfield sitting together on the bench, held that the appellant company was liable for the payment of such license tax, after which finding of liability the matter was referred to a referee.

## ARGUMENT.

### I.

WAS THE WHARF USED BY APPELLANT A PUBLIC WHARF SUCH AS TO BE SUBJECT TO THE LICENSE TAX UNDER THIS STATUTE?

What is meant in the Act by the term "public wharf?"

*(A) Inapplicability of Authorities Quoted by Appellant.*

Practically all of the authorities referred to by counsel for appellant in his brief, except *Sesnon vs. United States*, are civil cases, and do not touch license tax matters, nor the question of what constitutes a public wharf such as to make it liable to a license tax under this statute, and the *Sesnon* case supports the government's contention in the case at bar.

The case of *Spreckels Sugar Refining Co. vs. McLean*, 192 U. S. 397, 48 L. Ed. 496, referred to by appellant on pages 9, 10 and 11 of its brief, appears to us to have no application whatever to the case at bar, for in that cause the court was trying to determine the amount of tax that should be paid by the Sugar Refining Company on its gross annual receipts and there was no question of the Sugar Refining Company prosecuting the business of a public wharf on which there was a separate license tax as in this cause.

The case of *Dutton vs. Strong*, 1 Black. (U. S.) 35, 17 L. Ed. 29, referred to on page 14 of appellant's brief, was a civil suit and is not applicable to the case at bar since that was merely a question of the right of the owner of a vessel to tie up to the wharf owner's pier.

The case of *Transportation Co. vs. Parkersburg*, 107 U. S. 691, 27 L. Ed. 584, referred to by appellant on pages 14 and 15 of its brief, was a civil suit involving merely the question of reasonable wharf charges.

The case of *Louisville R. Co. vs. West Coast etc. Co.*, 198 U. S. 483, 49 L. Ed. 1135, referred to by appellant on page 15 of its brief, is not applicable here since that was a civil case where the only question decided was that the wharf was not such a public wharf whose use could be demanded by shippers for the purpose of employing vessels of their own selection for the further carriage of their goods.

The case of *Potomac Steamboat Co. vs. Upper Potomac Steamboat Co.*, 109 U. S. 672, 27 L. Ed. 1070, referred to by appellant on page 16 of its brief, was

a civil case in which the rights of riparian proprietors only were decided.

The *Weems Steamboat Co. vs. People's Steamboat Co.*, 214 U. S. 345, referred to by appellant on pages 15, 16 and 17 of its brief, was a civil case in which there was no question considered as to the public character of the wharves used in the handling of freight for the general public.

The case of *Compton vs. Hawkins*, 90 Ala. 411, 24 Am. St. 923, referred to on pages 17 and 18 of appellant's brief, was a civil case involving only the right to store and deposit logs and timber at a landing place for the purpose of rafting. In that case the Appellate Court practically declared that the wharf was a public wharf for general public use, but not for the purpose of storing logs and timber for rafting, which was an unusual use demanded by the complainant.

(B) *Object of the Statute, and Its Construction.*

Congress may provide by direct legislation for a system of licenses for the support of local government in the territories, and the act in question is one for the support of local government, said act, approved June 6th, 1900, having superseded a former act of Congress enacted for the same purpose, approved March 3d, 1909.

*In re Wynn-Johnson*, 1 Alaska 630;

*United States vs. Binns*, 1 Alaska 553;

*Binns vs. United States*, 194 U. S. 486, 48 L. Ed. 1087;

*Engleman vs. United States*, 86 Fed. 456;

*John J. Sesnon Co. vs. United States*, 182 Fed.  
576;  
25 Cyc. 599.

This statute is a revenue statute, and is to be construed liberally and sensibly so as to carry out the purposes of the legislative intention in its enactment, which in this case was to raise revenue, and also so as to avoid an unjust or absurd conclusion.

*John J. Sesnon Co. vs. United States*, 182 Fed.  
576;  
*Lau Ow Bew vs. United States*, 144 U. S. 47,  
p. 59; 36 L. Ed. 340, p. 344.

In this case at bar—which it might be mentioned is a test case upon the result of which others are awaiting—the government is only asking for the payment of the license tax on freight handled over the wharf of appellant, consigned to other shippers than itself, when I am inclined to the opinion, that under the law appellant could and should be required to pay a license tax on the freight shipped to itself and handled over this wharf, and it is admitted by appellant that it has never paid any of the license tax against which it protests.

*John J. Sesnon Co. vs. United States*, 182 Fed.  
579;  
Pp. 33 and 34, Transcript of Record.

This statute was in effect long before the wharf was built and used by the appellant company in its dealings with the public, and it is not shown con-

clusively that the appellant has a deed to the water front where its wharf is located on a navigable river.

Pp. 26 to 33 inclusive, Transcript of Record.

There is no evidence to show that the wharf business was included in the mercantile business of appellant for a mercantile tax, and the fact that appellant pays a mercantile tax is immaterial. The agreed statement of facts and the evidence, too, show clearly that appellant handled the freight of other shippers on the Fairbanks wharf and appellant could not under the statute, run this wharf business as incidental to its mercantile business any more than it could run its steamboats or a liquor shop as incidental to such business. It could not dovetail in this wharf business to avoid a public wharf license tax any more than it could a liquor license tax, nor can a steamboat company being a common carrier, construct or lease docks and thus evade the payment of this license tax when the patrons shipping over their lines constitute the public.

*Brass vs. North Dakota*, 153 U. S. 391, 38 L. Ed. 761.

The public wharf business is a thing to be taxed separate and distinct from the mercantile business.

*Galveston Co. vs. Galveston Wharf Co.*, 10 S. W. 587;

*Municipal Tel. etc. Co. vs. Ward*, 135 Fed. 1006;

*Western Express Co. vs. United States*, 141 Fed. 28.

Appellant contends that the government is placed in a curious position on account of paragraph VII of the statement of facts, but paragraph VII must be read and interpreted together with all of the other paragraphs of the stipulation and it must be given a reasonable interpretation. Even the latter part of paragraph VII contradicts in a sense the fore part of the said paragraph. It was no doubt meant that appellant was not engaged alone in the business of maintaining public docks and wharves separate and distinct from its transportation business.

Any way, as under the statute, no officer of the United States has authority to dispense with the requirements of the law and the United States is not bound by any inadvertent acts or omissions of its officers in this respect.

*Minturn vs. United States*, 106 U. S. 445, 27 L. Ed. 210;

*Hart vs. United States*, 95 U. S. 316, 24 L. Ed. 479.

The question of whether the docks and wharves are conducted publicly was and is the question contended for by the government and decided in the affirmative by the two judges presiding in the Court below from the evidence and statement of facts, and that is one of the principal propositions to be decided here in this Court.

(C) *The Public Use of a Wharf by the General Public Who are Patrons of a Common Carrier, Makes it a Public Wharf Such as to Subject it to*



*this License Tax for the Purpose of Raising Revenue for the Support of Local Government in the Territory.*

Replying to appellant's argument in its brief on pages 18 to 22 inclusive as to the considerations which determine whether or not a wharf is public or private, I submit to the Court the following propositions which the government contends are fully supported by the law and the evidence:

(1) The wharf was built by the appellant company to carry on business for the public in its capacity as a common carrier for its shippers and itself.

Par. VI Stipulation, p. 6, Transcript of Record.

Pp. 19 to 26 inclusive, Transcript of Record.

(2) The wharf at Fairbanks has been used by the appellant company in its business as a common carrier for all shippers who apply—the public generally—and under its charter it did business with all comers and so the dock was put to public use and the cost of maintaining the dock was really charged up in the freight charges to pay the general cost of operating, although no separate charge for wharfage was made.

Pp. 24, 25, Transcript of Record;

Par. I Stipulation, p. 4, Transcript of Record;

Pp. 20 to 26 inclusive, Transcript of Record.

(3) The authority by which the wharf was erected was that the appellant is a corporation duly authorized by law under its charter to construct and otherwise dispose of wharves and it conducted this one at

Fairbanks as a public wharf as the stipulation and evidence clearly show.

Pp. 4 to 6 inclusive, Transcript of Record;  
Pp. 20 to 26 inclusive, Transcript of Record.

(4) Even though the appellant company may own the soil where it built the wharf, it is still a public wharf when it is used to carry on business for the public in connection with itself as a common carrier, as is done here in the case at bar for all shippers who apply.

P. 26, Transcript of Record.

(5) and (6) This wharf is located on a navigable river, and although owned by the appellant company as its private property, is used as a public wharf by appellant in its business as a common carrier, even though no separate and distinct charges from the freight charges are made.

(7) The wharf is in effect dedicated to public use and becomes a public wharf when used by the appellant company as a common carrier of freight handled for all shippers who may apply.

Here the appellant company lands and handles freight over its wharf for a great many shippers who patronize its line of steamers, and its wharf has the same public character as its steamers have as common carriers.

Pp. 5, 6, and 22 to 26 inclusive, Transcript of Record.

Appellant puts in italics and calls particular atten-

tion to the latter part of the instruction of the trial court to the jury in the case of *John J. Sesnon vs. United States*, 182 Fed. 573, quoted on page 13 of its brief, in which the Court stated

“If they only landed freight for their own purposes, for their own uses, why then of course it would be a private wharf and would not be subject to a license.”

But in the case at bar the freight of other shippers was handled by appellant and the appellant company did not land and handle freight for its own uses and purposes *alone*, so as to make the wharf private as counsel for appellant would have you believe, for it landed and handled thousands of tons of freight for the purposes and uses of the many shippers who patronized its line of steamers and wharf, and thus the wharf became and is, a public wharf, and even though appellant did not make a separate and distinct charge of wharfage to those who shipped freight over its wharf and line of steamers, it is the use to which the wharf is put and not the charge, which makes it a public wharf, and it is freight handled, not charged for, that determines the amount of the license tax.

*Brass vs. North Dakota*, 153 U. S. 391, 38 L. Ed. 761;

*John J. Sesnon Co. vs. United States*, 182 Fed. 579.

The word “public” has two proper meanings. A thing may be said to be public when owned by the public, and also when its uses are public.

*Missouri O. & G. Ry. Co. vs. State*, 119 Pac.  
119;  
32 Cyc. 748.

Where property is devoted to a use in which the public has an interest, it is affected with a public use and is subject to regulation under the public power by the imposition of a license tax.

*Munn vs. Illinois*, 94 U. S. 113, 24 L. Ed. 77;  
*Budd vs. New York*, 143 U. S. 517, 36 L. Ed.  
252;  
*Brass vs. North Dakota*, 153 U. S. 391, 38 L.  
Ed. 761.

Any use of anything which will satisfy a reasonable public demand for public facilities, for travel or for transmission of intelligence or commodities, would be a public use and what is a public use is a judicial question.

*In re Application Stewart*, 33 L. R. A. 429.

Even though appellant claimed the wharf is used only for its own business and that other business is merely incidental, yet the dock is public, for it handled 21,900 tons of freight for other people as shown by the record.

Pp. 50 to 55 inclusive, Transcript of Record.

A wharf may be private or public though owned by an individual, and the use it has been put to at least furnishes a basis for an inference of the owner's intention in its construction and maintenance.

*Thousand Island etc. Co. vs. Visger*, 71 N. E. 765.

When private property is devoted to a public use, it is subject to public regulation and therefore to a license tax.

*Munn vs. People of Ill.*, 94 U. S. 113, 24 L. Ed. 86;

*Ryan vs. Louisville Co.*, 45 L. R. A. 306.

When appellant company makes its wharf public, that is, assumes to serve the public as in the case at bar for all shippers patronizing its steamers which are common carriers, then it dedicates its wharf to public use, and the wharf becomes a public wharf, subject to public regulation and control, and so subject to a license tax.

*State vs. Edwards*, 29 Atl. 947, 86 Me. 102.

This wharf is used and controlled by a corporation organized under the laws of New Jersey and doing a public business in Alaska as a common carrier.

Par. I Stipulation, pp. 4 and 26, Transcript of Record.

This wharf is the appellant company's terminal and is an indispensable instrumentality in its business as a common carrier, the Northern Commercial Company and the Northern Navigation Company, and is a public dock.

*Budd vs. New York*, 143 U. S. 517, 36 L. Ed. 252.

A common carrier operating a wharf on one of the highways of commerce is engaged in a public service and is subject to public regulation. The fact that no separate charge is made by appellant does not prevent the wharf from being a public wharf for the purposes of this case. There is, in fact, a consideration paid by all shippers, for freight handled over the appellant's wharf, in freight charges paid.

Pp. 24, 25, Transcript of Record;  
*Ryan vs. Louisville Co.*, 45 L. R. A. 303;  
*Munn vs. People of Ill.*, 94 U. S. 113.

The appellant company cannot pose as a common carrier with steamers devoted to public use and subject to carry freight for all who may apply, right up to the wharf landing, and then say this is a private wharf, although the general public's freight is handled over the said wharf from its steamers.

*Budd vs. New York*, 143 U. S. 517, 34 L. Ed. 252.

The appellant wants, of course, the protection of the laws, but it appears without assuming the burdens of taxation necessary to maintain the laws giving such protection.

Exemption from taxation is not favored by the law, and will not be sustained unless such clearly appears to have been the intent of the legislature and every reasonable doubt should be resolved in favor of the taxing power. Indeed, the taxing power of the State is never presumed to be relinquished and it exists unless the intention to relinquish it is declared



in clear and unambiguous terms admitting of no other reasonable construction and an exemption from taxation must be clearly defined, and founded on plain language without doubt or ambiguity.

*Yazoo & Mississippi Valley R. R. Co. vs. Adams*, 180 U. S. 1, 45 L. Ed. 395;  
*Southwestern Ry. Co. vs. Wright*, 116 U. S., 231, 26 L. Ed. 626;  
*Bank of Commerce vs. Tennessee*, 161 U. S. 134, 40 L. Ed. 145;  
*Chicago etc. Co. vs. Missouri*, 120 U. S. 569, 30 L. Ed. 732;  
*Memphis etc. Co. vs. Taxing District*, 109 U. S. 398, 27 L. Ed. 976.

Exemptions from taxation are regarded as in derogation of the sovereign authority and of the common right, and therefore not to be extended beyond the exact and express requirements of the language used, construed *strictissima juris*.

*Yazoo & Miss. etc. Co. vs. Thomas*, 132 U. S. 174, 33 L. Ed. 302.

## II

### IS THIS CASE PROPERLY BEFORE THE COURT?

Counsel for the government contends that although there was a stipulation to submit to the District Court of Alaska the question of the liability of the appellants to pay this license tax, in which tribunal or a judge thereof, was vested the power to grant licenses, the proceeding was not a suit or action in which a final decree or judgment was rendered from which the

appellants could take an appeal or come up on writ of error to this Court or the Supreme Court. This proceeding was in effect an application for a license, coupled with a protest against being required to take out such a license and pay for the same, on the ground that it did not come within the provisions of the Alaska law, and its collection was therefore illegal. Furthermore, in the case at bar, we have a revenue statute imposing a license tax for the support of local government in the territory of Alaska, and the appellants have not paid any money in liquidation of such license tax. The statute of limitations, too, has been enlarged by the stipulation to submit the controversy to the lower Court, and the jurisdiction of the lower Court under the stipulated case, would not be affected, as judgment in the lower Court should be considered as final. Therefore, the order and judgment of the District Court should be confirmed.

*Pacific Steam Whaling Co. vs. U. S.*, 187 U. S. 452, 47 L. Ed. 253, 6;  
*Corbus vs. Alaska Treadwell Co.*, 99 Fed. 334;  
*Taylor vs. Secor*, 92 U. S. 613, 23 L. Ed. 673;  
*Patton vs. Brady*, 184 U. S. 614, 46 L. Ed. 717;  
 Pp. 4 to 10 inclusive, 33, 34, 38 and 39, Transcript of Record.

### III.

#### CONCLUSION.

This revenue statute referred to, creates a tax on practically every line of business, including public docks, wharves and warehouses, and since the term

“public warehouse” as used in the act must mean a warehouse where the goods, wares and merchandise of the public who have need of such accommodations are stored, it necessarily follows that the words “public wharf” used in the same clause, should be consistently construed and that construction should be limited here simply to the question of whether the freight handled over the wharf of appellant, was that of the general public, and that it was such a public wharf as to be subject to the license tax.

Upon the foregoing argument and authorities, the government’s contention is that the decision of the District Court was correct, and should be affirmed.

Respectfully submitted,

JAMES J. CROSSLEY,  
United States Attorney.

